

**BY-LAWS
OF
THE NEUSE RIVER COMPLIANCE ASSOCIATION
(REVISED 5/04/17)**

ARTICLE I

MISSION

Mission Statement: The mission of the Neuse River Compliance Association (hereinafter called the “Association”) shall be to preserve water quality in the Neuse River and more specifically promote and achieve compliance with Total Maximum Daily Load (“TMDL”) requirements for total nitrogen (“TN”) at the Neuse River Estuary as such requirements apply to point source dischargers who choose to join the Association by:

1. Qualifying as a group compliance association under N.C. Gen. Stat. § 143-215.1(C3) and 15A NCAC 2B .0234(9), Neuse River Basin – Nutrient Sensitive Waters Management Strategy: Wastewater Discharge Requirements.
2. Forming and promoting a coalition of local governments, public and private agencies, corporations and other interested entities that currently hold National Pollutant Discharge Elimination System Permits (“NPDES Permits”) to discharge in the Neuse River Basin or have held such a permit and currently hold an Estuary Allocation to work collectively to reduce their discharge of TN.
3. Collecting and analyzing information and data and developing, evaluating and implementing strategies to reduce, control and manage discharge of pollutants in the Neuse River Basin, particularly TN.

4. Developing a framework to encourage cost-effective, creative solutions for development or enhancement of treatment facilities by members to ensure individual and group compliance with the TMDL at the Neuse River Estuary and with other TN regulatory limits established within the Neuse River Basin.
5. Creating mechanisms to encourage and facilitate cost-effective approaches to transferring or trading among members, and with non-members or non-point sources when feasible and beneficial, of portions of their individual TN allocations so as to maximize the effectiveness and equitably distribute the costs of TN reduction measures among members.
6. Creating binding mechanisms as incentives to members to reduce their TN discharge and comply with their individual TN allocations and creating mechanisms to penalize or remove members for failure to reduce TN discharged or to otherwise comply with these By-Laws.
7. Providing accurate technical management, regulatory and legal recommendations regarding the implementation of strategies and appropriate effluent limitations on discharges of TN and other pollutants into the Neuse River Basin.
8. Developing a framework to educate the public concerning the importance of limiting pollution and the positive role that the Association and its members have played in the TN reduction strategy.
9. Interacting with the North Carolina General Assembly, the Environmental Management Commission (the “Commission”), and other agencies and entities in developing and

adopting policies, laws and rules regarding TN management and limitations in the Neuse River Basin, and participating in legal and administrative procedures affecting such policies, laws and rules or otherwise affecting, directly or indirectly, the Association or its members.

The Association will exclude from its permissible activities any political action, which would favor one party over another and will not participate in any political campaign on behalf of any candidate for office.

The Association will seek tax exempt status under Section 501(c)(3) of the Internal Revenue Code and it is the express purpose of the Association to engage in the above-listed activities only to the extent that such activities comport with the exemption from income tax provided by Section 501(c)(3).

ARTICLE II

DEFINITIONS

For purposes of these By-Laws, the following terms and phrases shall have the indicated meaning:

1. “Association” shall mean the Neuse River Compliance Association, a non-profit corporation comprised of owners and/or operators of wastewater treatment facilities in the Neuse River Basin, established voluntarily under 15A NCAC 2B.0234 to meet the Estuary TN Allocation of its members collectively.

2. “Association NPDES Permit” shall mean the NPDES permit issued by the North Carolina Division of Water Quality (“Division”) to the Association establishing the TN

discharge obligations of the Association. The Association NPDES Permit may serve as a group compliance agreement and shall identify, at a minimum, the Co-Permittee Member facilities and their combined Estuary TN Allocation, and monitoring and reporting requirements. The Association NPDES Permit shall be formally approved by the Commission.

3. “Association Estuary TN Allocation (or Load)” shall mean the aggregate (sum) of the allocation (or load) of all the Association’s Co-Permittee Members:

4. “Board” shall mean the Association’s duly appointed Board of Directors.

5. “Co-Permittee Members” shall mean those NPDES dischargers that in a given calendar year are members of the Association, have an NPDES permit to discharge 500,000 or more gallons per day, and are listed in Appendix A of the Association NPDES Permit.

6. “Discharge Allocation” shall mean the mass quantity of TN that a discharger is allowed to release into surface waters of the Neuse River Basin as measured at the point of discharge (or “end-of-pipe”).

7. “Discharge Load” shall mean an actual mass quantity of TN measured at the point of discharge.

8. “Estuary” shall mean the Neuse River Estuary, which extends from approximately Streets Ferry to the Pamlico Sound.

9. “Estuary TN Allocation” shall mean the mass quantity of TN that is allowed to be transported to the Neuse estuary from a discharger or group of dischargers. In the case of

individual dischargers, the Estuary TN Allocation is equivalent to the Discharge Allocation multiplied by the applicable Transport Factor.

10. “Estuary Load” shall mean the actual mass quantity of TN that a discharger or group of dischargers releases into surface waters of the Neuse River Basin that is transported to the estuary. In the case of individual dischargers, the Estuary Load is equivalent to the Discharge Load multiplied by the applicable Transport Factor.

11. “Neuse River Basin” shall mean that area containing nutrient sensitive waters regulated under 15A NCAC 28.0232-.0242.

12. “Person” shall mean individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

13. “Regionalization” shall mean the consolidation of wastewater collection and/or treatment systems that results in the elimination of one or more NPDES-permitted discharges.

14. “Total Maximum Daily Load or TMDL” shall mean generally the allowable load of a pollutant that can be discharged to a water body without causing impairment of that water’s designated uses, and where specified may refer to the TMDL for TN in the Neuse River Basin approved by the U.S. Environmental Protection Agency on March 19, 2002, and subsequent revisions.

15. “Total Nitrogen (TN)” shall mean the sum of the organic, nitrate, and ammonia species of nitrogen in a water or wastewater.

16. “Transport Factor” shall mean the fraction of the TN from a NPDES Permit discharge location that is predicted to reach the Neuse Estuary, as determined by the Division.

ARTICLE III

OFFICES

Section 1. Principal Office. The location of the principal office and the other offices of the Association will be determined by the Board of Directors.

Section 2. Other Offices. The Association may have offices at such places, within the State of North Carolina, as the Board of Directors may from time to time determine.

ARTICLE IV

MEMBERSHIP

Section 1. Members. The membership of the Association shall be open to all Persons owning and/or operating a wastewater treatment facility in the Neuse River Basin that receives nitrogen-bearing wastewater and that is either currently required to obtain an individual NPDES permit or has held such a permit and currently holds an Estuary TN Allocation, as well as certain other persons as specified in Section 3 herein. The initial members of the Association shall be those persons who are eligible and who are, or who agree to become, a party to the Association Compliance Agreement on or before December 31, 2002. Persons holding NPDES permits or Estuary Allocations for more than one (1) facility shall be eligible only for a single membership, however all such facilities shall be subject to these By-Laws and all other rules of membership in the Association. Persons desiring membership in the

Association shall submit a request for membership by July 1 of any given year. The Association shall verify the eligibility of each applicant, approve or deny the request in its sole discretion by the vote of a majority of the Board, and notify the applicant by September 15 immediately following the request for the action. The Association shall also notify the Division of any approved applicant by September 15. Enrollment of any approved Co-Permittee Member shall become effective for NPDES compliance purposes on January 1 of the immediately following year.

Section 2. Removal of Members.

(a) Involuntary Removal. A member may be removed involuntarily by a two-thirds (2/3) majority vote of the Board for just cause as defined in this Section, provided, however, that removal of a member shall be preceded by notice to the member not less than one hundred eighty (180) days prior to the effective date of removal. Such notice shall include a description of the reason for removal.

(b) Resignation. A member may resign its membership in the Association voluntarily as provided by the North Carolina Nonprofit Corporation Act. A member wishing to resign must notify the Association in writing at its Registered Office. Notwithstanding the resignation of a member, however, a member's obligations and commitments with respect to TN allocations, if applicable, as well as any and all other commitments to which a Member is obligated shall continue subsequent to and shall survive such resignation for a period of 180 days. Any person choosing to become a member of the Association affirmatively consents to such continuing obligations and commitments

(c) Effective Date of Membership Termination. In the event a member's membership is terminated involuntarily, such termination shall become effective on January 1 of the immediately following year, at which time the terminated member shall no longer be a party to the Association Compliance Agreement, if applicable, and until such time the member shall remain subject to all obligations and responsibilities of membership. Any member whose membership is terminated shall remain liable after the effective date of termination for any dues, fees, penalties or other financial obligations a member incurs before the effective date of termination.

(d) Just Cause for Removal. Just cause for removal of a member may include: failure to pay dues, fees or assessments; violation of these By-Laws by any member, or in the case of Co-Permittee Members, violation of the Association Compliance Agreement; failure to pay a penalty assessed by the Association for the Co-Permittee Member's share of a penalty assessed against the Association; excessive and/or continued violation, as defined by the Board, of the Co-Permittee Member's Individual TN Allocations without showing improvement or having submitted to the Association a plan for improvements; or selling, trading or transferring in any manner any portion of such Co-Permittee Member's TN allocation to any person that is not a member of the Association. The Board may adopt other reasons for removal.

Section 3. Classes of Membership. There shall be the following classes of membership in the Association:

(a) Voting Members. Co-Permittee Members and Monitoring Members shall comprise the voting membership of the Association.

- (1) Co-Permittee Members. “Co-Permittee Members” shall include all members with NPDES permits to discharge 500,000 or more gallons per day and who are listed in Appendix A of the Association NPDES Permit. The approval of a majority of the Co-Permittee Members shall also be required for amendment of the Articles of Incorporation. Co-Permittee Members shall pay dues according to the dues schedule approved by the Board. Co-Permittee Members shall have voting rights in all matters associated with this class of membership. Only Co-Permittee Members shall be exempted from the permit limits for total nitrogen contained in their individually issued NPDES permits.
- (2) Monitoring Members. Monitoring Members shall include all members with NPDES permits to discharge 500,000 or more gallons per day who participate in the Associations’ monitoring program. Monitoring Members shall pay dues according to the dues schedule approved by the Board. These members shall have voting rights in all matters associated with this class of membership. Monitoring Members are not exempted from the permit limits for the total nitrogen contained in the individually issued NPDES permits.
- (3) A member may be both a Co-Permittee Member and a Monitoring Member. Fees for these members will be assessed based on the fee

schedule approved by the Board. These members shall have voting rights in all matters of the Association.

(b) Nonvoting Members.

- (1) The Association shall have a class of non-voting members made up of members with NPDES Permits to discharge less than 500,000 gallons per day or those holding water quality permits or possessing an allocation for nitrogen, which class shall be known as “Nonvoting Members”.
- (2) The Association shall have a class of non-voting members composed of outside organizations with an interest in the purposes of the Association, which class shall be known as “Affiliate Members”.
- (3) Nonvoting Members are not exempted from the permit limits for total nitrogen contained in their individually issued NPDES permits.

The Board of Directors may also establish other classes of nonvoting members as shall be determined by it from time to time. The Association may include a class of non-voting provisional members constituted of Persons that have submitted or intend to submit to the Division an application for a NPDES permit, provided that such members’ memberships shall be terminated upon final denial of the permit. The Board may require fees or assessments, in addition to, or in lieu of, dues for a class of non-voting members.

Section 4. Dues. The Board shall adopt rules regarding annual dues to be paid by Members. The total amount of dues shall be adequate at least to pay

administrative expenses of the Association. The rules shall establish a date by which dues shall be billed and a date by which they shall be paid. The amount of dues of an individual member shall be proportionate to the amount of flow that member is permitted to discharge under its NPDES permit.

Section 5. Additional Rules Regarding Membership. The Board may adopt rules and regulations not inconsistent with these By-Laws governing the selection, qualification and removal of members.

Section 6. Meetings. A regular annual meeting of the members shall be held each year on a date to be set by the Board at the Association's registered office or at such other place within or without the State of North Carolina as may be specified in the Notice of Meeting. Special meetings of the members may be called by the President or Board of the Association. Special meetings may also be called by a majority of the members entitled to vote at such meeting. Meetings of the members shall be governed by the procedures for meetings of the Directors.

[The following policy or procedure was adopted June 17, 2003.] The Annual meeting shall be held in mid-August to allow for presentation of the mid-year information regarding TN discharges and other related information, which is to be prepared in report form and submitted to DWQ by August 31.

Section 7. Members List. The Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of a meeting and of those who are voting members. As required by §55A-16-02(c) of the North Carolina General Statutes, a member may inspect and copy the list of members at any other time if: (i) the member gives the Association written notice of his or her demand at

least five (5) business days before the date on which the member wishes to inspect and/or copy the list; (ii) the member's demand is made in good faith and for proper purposes; (iii) the member describes with reasonable particularity the purpose of inspection and the list he or she desires to inspect; and (iv) the list is directly connected with this purpose.

Section 8. Liability and Property Rights of Members. The members of the Association shall not be liable or responsible for the debts, liabilities or obligations of the Association or other members or classes of members, and shall have no property rights with respect to the Association. Specifically, without limiting the other provisions of this Section 8, non-Co-Permittee Monitoring Members shall not be liable for any fines, assessments, penalties, compliance orders or obligations, or any liabilities or obligations incurred or undertaken by Co-Permittee Members relating to the Association NPDES Permit.

Section 9. Transfer of Membership. In the event a member transfers its NPDES permit in accordance with applicable NPDES permit rules and procedures to another person that is not a member of this Association, upon application for membership by the transferee and upon appropriate modification of the Association NPDES Permit, the transferor's membership shall also be transferred to the transferee. In the event a member transfers its NPDES permit to another member, the transferor's TN allocation, if any, shall be credited to the transferee, and the transferor's membership shall be terminated so that the transferee shall hold only a single membership.

ARTICLE V

BOARD OF DIRECTORS

Section 1. General Powers. Except as otherwise provided in this Article, the business and affairs of the Association shall be managed by the Board. In addition to the power and authority expressly conferred upon it by these By-Laws, the Board may exercise all powers of the Association and do all such acts and things not otherwise prohibited by law or the Articles of Incorporation.

Section 2. Number; Appointment and Term. The number of directors constituting the Board shall be one (1) per voting member. In addition, a voting member may appoint one (1) primary alternate and one (1) secondary alternate. The primary alternate Director shall have full voting authority in the absence of the appointing Member's regular Director. The secondary alternate Director shall have full voting authority in the absence of both the appointing Member's Director and primary alternate Director. There shall at all times be a minimum of one (1) director for the Association.

Each voting member shall notify the Association of the name of its director, its primary alternate Director and its secondary alternate Director at the annual meeting of members. Each director shall hold office for a term of two (2) year or until the earlier of his resignation, retirement, removal, disqualification or his successor is appointed and qualified. A member may change its designated Director, primary alternate Director or secondary alternate Director at any time by notifying the Association in writing at its registered office. Any such change shall become effective when the Association receives the notification.

Section 3. Duties. Each director shall discharge his duties as a director, including his duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interest of the Association.

Section 4. Regular Meetings. Regular meetings of the Board shall be held at a time and place designated by the Chairperson every other month during the year. The frequency of regular meetings may be changed by the directors. Notice of meetings shall be provided as required hereunder.

Section 5. Special Meetings. Special meetings of the Board may be called by the Executive Committee or any five or more directors not on the Executive Committee. The notice and vote by electronic response to a proposed action without a meeting of the directors is a special meeting for purposes of the standard for the call of a meeting.

Section 6. Notice of Board Meetings. Written or printed notice of any regular or special meeting of the directors, stating the place, day, and hour of the meeting, and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) days before the date of the meeting, either personally, by mail, electronic mail, telegram or facsimile at the address shown on the Association's records, by or at the direction of the Chairperson or the Secretary, or the officers or persons calling the meeting, to each director. If mailed, such notice is deemed to be delivered when deposited in the United States mail addressed to the director at his

address as it appears on the records of the Association, with postage thereon prepaid. If notice is given by facsimile transmission, such notice shall be deemed to be delivered when the transmission is sent. Any director may waive notice of any meeting. The waiver shall be in writing signed by the director entitled to the notice and filed with the minutes or corporate records; provided, however, a director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 7. Quorum. The presence of forty percent (40%) for meetings to proceed but fifty percent (50%) or greater of the voting members of the Board in office immediately before a meeting begins shall constitute a quorum for the transaction of business by the Board of Directors; provided, that if less than a quorum of the directors shall be present at the time and place of any meeting, the directors present may adjourn the meeting from time to time until a quorum shall be present, and notice of any adjourned meeting need not be given. Once a quorum is present at a meeting, the exiting or abstention of any director shall not remove such quorum and all business which otherwise could have been conducted at such meeting may continue to be conducted.

Section 8. Voting. Except as otherwise expressly provided by the Act, or by the Articles of Incorporation, or by these By-Laws, the action of a majority of the Directors authorized to vote and present at a meeting at which a quorum is present shall be the action of the Board; provided that a supermajority of two-thirds (2/3) of

the directors authorized to vote and present shall be required for expulsion of a member, amending these By-Laws, or electing a primary alternate or second alternate Director, or any other person other than a director as an officer. Each voting member of the Association shall be entitled to have one (1) vote on any matter coming before the Board. As stated elsewhere herein, each voting member shall have the right to appoint one Director, one primary alternate Director, and one secondary alternate Director. The primary alternate Director shall have full voting authority only in the absence of the appointing Member's regular Director and the secondary alternate Director shall have full voting authority only in the absence of both the appointing Member's regular Director and primary alternate Director. In the event a Director is Chairperson of the Association, that Director's primary alternate Director or secondary alternate Director shall have voting authority instead of the Director for as long as the Director is Chairperson. Any Director, primary alternate Director, or secondary alternate Director who has voting authority at a meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (i) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; or (ii) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (iii) he files written notice of his dissent or abstention with the presiding officer of the meeting before its adjournment or with the Association immediately after adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action. Directors of Co-Permittee Members shall be authorized to vote only on matters associated with that class of membership. Directors of Monitoring Members shall be

authorized to vote only on matters associated with that class of membership. All of a Member's right to take part in the management of the Association shall be by and through its Director, primary alternate Director, or secondary alternate Director.

Section 9. Action by Directors Without Meeting. Any action required or permitted by the By-Laws to be taken by the Board at an annual, regular, or special meeting may be taken without a meeting. Notice of the proposed action and the reasons for taking action without a meeting must be sent to all directors at least 15 days in advance of the proposed action. A second notice shall be provided to any director who has not responded within 10 days following the first notice. Unless a director objects in writing to taking the proposed action without a meeting or the majority of the quorum required for the proposed action does not consent in writing by the 15th day following the notice, the proposed action will be deemed to be approved.

Section 10. Participation By Telecommunications. Any or all directors may participate in a meeting of the Board by any means of communication by which all directors participating may simultaneously hear each other during the meeting.

Section 11. Resignation of Directors. Any director may resign at any time by communicating his resignation to the Board, its presiding officer, or to the Association. A resignation is effective when it is communicated unless the notice specifies a later effective date or subsequent event upon which it will become effective.

Section 12. Vacancies. In the event of any vacancy occurring in the Board by death, resignation, disqualification, or otherwise, the remaining directors shall continue to act. The alternate designated by the member shall become director for such member unless and until the member designates another director in accordance with the manner by which the vacating director obtained office. Any director so chosen shall hold office for the unexpired portion of the term of the person whom the newly elected director succeeds and until his successor shall have been duly elected and qualified, or until his death, or until he shall resign or shall become disqualified. An increase in the number of directors shall be deemed to create vacancies in the Board to be filled in the manner provided in this Section 12. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date or otherwise) may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

Section 13. Compensation of Directors. Directors shall not receive any compensation for their services as such; provided, however, that nothing in this Section 13 shall be construed to preclude any person who is a director from also serving the Association in another capacity and receiving compensation therefor.

Section 14. Director's Conflict of Interest. Any Association transaction in which a director or the member represented by the director has a direct or indirect interest must be authorized, approved, or ratified in good faith by a majority, but in any event not less than two (2), of the Directors who have no direct or indirect interest in the transaction even though less than a quorum; provided, however, no such transaction shall be authorized, approved, or ratified by a single director. For

purposes of this Section, a director or voting member has an indirect interest in a transaction if:

- (a) Another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction; or
- (b) Another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the Board.

It shall not be considered a conflict of interest hereunder that the municipality or other entity which a director represents has an interest in, or otherwise is affected by, a decision or transaction regarding the management and control of TN or other pollutants.

Section 15. Certain Director Liability. In addition to other liabilities imposed by law upon corporate directors, a director shall be subject to the following liabilities:

(a) All directors who vote for or assent to any distribution of assets of the Association contrary to any lawful restrictions in the Act, the Articles of Incorporation, or these By-Laws, shall be jointly and severally liable to the Association for the amount of the distribution that exceeds what could have been distributed without violating such restrictions.

(b) A director shall not be liable under the provisions of subparagraph (a) above, if he performed his duties in compliance with Section 3 of this Article V or (unless his actual knowledge concerning the matter in question makes such reliance

unreasonable) he relied on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (i) one or more officers or employees of the Association whom the director reasonably believes to be reliable and competent in the matters presented; (ii) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within their professional or expert competence; or (iii) a committee of the Board of which he is not a member if the director reasonably believes the committee merits confidence.

ARTICLE VI

OFFICERS

Section 1. Number of Officers. The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as may be appointed in accordance with the provision of Section 3 of this Article VI. To be eligible to hold office, an individual must represent a member that is both a Co-Permittee Member and a Monitoring Member of the NRCA. The President and Vice President of the Association may hold simultaneously the same office in the Lower Neuse Basin Association, provided that such person represents the same member in both associations. The same individual may simultaneously hold more than one (1) office in the Association, but no individual may act in more than one (1) capacity where action of two (2) or more officers is required.

Section 2. Election, Term of Office and Qualifications. Each officer, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article VI, shall be elected by the Board at its annual meeting and shall hold office until the second annual meeting of the Board held next after his election or

until his death or until he shall resign or shall have been disqualified or shall have been removed from office. Directors and alternate Directors may be qualified to be officers of the Association.

Section 3. Subordinate Officers and Agents. The Board from time to time may appoint other officers or agents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board from time to time may determine. The Board may delegate to any officer or agent the power to appoint any subordinate officer or agent and to prescribe his respective authority and duties.

Section 4. Duties.

(a) An officer with discretionary authority shall discharge his duties under that authority in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interests of the Association.

(b) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of his office in compliance with subparagraph (a), above, or (unless his actual knowledge concerning the matter in question makes such reliance unreasonable) he relied on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by (i) one or more officers or employees of the Association whom the officer reasonably believes to be reliable and competent in the matters presented; or (ii) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within their professional or expert competence.

Section 5. Removal. The officers specifically designated in Section 1 of this Article VI may be removed, either with or without cause, by the Board. The officers appointed in accordance with the provisions of Section 3 of this Article VI may be removed, either with or without cause, by the Board or by any officer or agent upon whom such power of removal may be conferred by the Board. The removal of any person from office shall be without prejudice to the contract rights, if any, of the person so removed. The appointment of an officer does not itself create contract rights.

Section 6. Resignations. Any officer may resign at any time by giving written notice to the Board or to the President or the Secretary of the Association, or, if he was appointed by an officer or agent in accordance with Section 3 of this Article VI, by giving written notice to the officer or agent who appointed him. Any such resignation shall take effect upon its being accepted by the Board or by the officer or agent appointing the person so resigning, unless it specifies in writing a later effective date. If a resignation is made effective at a later date and the Association accepts the future effective date, the Board may fill the pending vacancy before the effective date if the Board provides that the successor does not take office until the effective date.

Section 7. Vacancies. A vacancy in any office because of death, resignation, removal, or disqualification, or any other cause, shall be filled for the unexpired portion of the term in the manner prescribed by these By-Laws for regular appointments or elections to such offices.

Section 8. President. The President shall be the executive officer of the Association, and, subject to the instructions of the Board, shall have general charge of the business, affairs, and property of the Association and control over its other officers, agents and employees. He shall preside at all meetings of the Board at which he may be present. The President shall do and perform such other duties as from time to time may be assigned to him by the Board.

Section 9. Vice President. At the request of the President, or in his absence or disability, the Vice President shall perform all the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall perform such other duties and have such authority as from time to time may be assigned to him by the Board.

Section 10. Secretary. The Secretary shall keep the minutes of the meetings of the Board and shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law. He shall maintain and authenticate the records of the Association and shall be custodian of the records, books, reports, statements, certificates and other documents of the Association and the seal of the Association, and see that the seal is affixed to all documents requiring such seal. In general, he shall perform all duties and possess all authority incident to the office of Secretary, and he shall perform such other duties and have such other authority as from time to time may be assigned to him by the Board.

Section 11. Treasurer. The Treasurer shall have supervision over the funds, securities, receipts, and disbursements of the Association. He shall in general

perform all duties and have all authority incident to the office of the Treasurer and shall perform such other duties and have such other authority as from time to time may be assigned or granted to him by the Board. He may be required to give a bond for the faithful performance of his duties in such form and amount as the Board may determine.

Section 12. Duties of Officers May be Delegated. In case of the absence of any officer of the Association or for any other reason that the Board may deem sufficient, the Board may delegate the powers or duties of such officer to any other officer or to any director provided a majority of the entire Board concurs therein.

ARTICLE VII

EXECUTIVE COMMITTEE; OTHER COMMITTEES

Section 1. Membership. The Board may, by resolution adopted by a majority of the directors then in office (provided a quorum is present), create an Executive Committee, consisting of three (3) or more members of the Board. The Board shall designate the Chairman of the Executive Committee.

Section 2. General Powers. The Executive Committee shall have and may exercise, in the interim between meetings of the Board, and except as otherwise provided in Section 8 of this Article, all the powers of the Board.

Section 3. Quorum. The presence of one-half (1/2) of the members of the Executive Committee at a meeting duly assembled shall constitute a quorum for the transaction of business.

Section 4. Meetings. Meetings of the Executive Committee may be called by or at the request of the President, the Chairman of the Executive Committee or by two (2) or more members of the Executive Committee.

Section 5. Vacancies. In the event of any vacancy occurring in the Executive Committee by death, resignation, disqualification, or otherwise, the vacancy shall be filled by the Board. Positions filled for an interim period shall be for the balance of the remaining term.

Section 6. Other Committees. By resolution adopted by a majority of the directors then in office (provided a quorum is present), the Board may designate one or more additional committees, each of which shall consist of two (2) or more directors, having and exercising such authority as may be conferred by such resolution.

Section 7. Committee Action as Board Action. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility or liability imposed by law; and any resolutions adopted or other action taken by any such committee within the scope of authority delegated to it by the Board shall be deemed for all purposes to be adopted or taken by the Board.

Section 8. Limitation of Powers. Committees vested with the authority to act on behalf of the Board in the management of the Association shall not:

- (a) Elect, appoint or remove directors, or adopt additional criteria for such removal, or fill vacancies on the Board or on any of its committees; or
- (b) Terminate any member or accept any new member.
- (c) Adopt, amend, or repeal the Association Compliance Agreement, Articles of Incorporation or these By-Laws.
- (d) Adopt any alternative TN allocation for any member or any method of determining alternative allocations.

Section 9. Removal. Any committee or any member thereof may be discharged or removed by action of a majority of the directors then in office (provided a quorum is present).

ARTICLE VIII

NITROGEN REDUCTION FUNCTIONS

Section 1. Compliance with Association Estuary TN Allocation. The Association is required by 15A NCAC 2B.0234 to meet the sum of the Estuary TN Allocations of its Co-Permittee Members (the “Association Estuary TN Allocation”). It is a major mission of the Association to comply with the Association Estuary TN Allocation in accordance with these By-Laws and with the Association Compliance Agreement.

[The following policy or procedure was adopted June 17, 2003.] The Association shall hold the allocation acquired from Burlington Industries as part of the Association allocation and with the approval of the Board, may lease part or all of it to a Member, but shall not otherwise distribute,

sell or exchange it. The amount of this allocation is 48,879 lbs/yr at the point of discharge and 24,440 lbs/yr at the estuary.

Section 2. Determining the Association Estuary TN Allocation. The Association Estuary TN Allocation shall be the sum of all the Co-Permittee members' Estuary TN Allocations in terms of loading delivered to the Estuary.

(a) Co-Permittee Member's Individual Estuary TN Allocations. A Co-Permittee Member's Estuary TN Allocation shall be the allocation specified for such member by the Division on the Association member roster effective January 1, 2003 (the "Association Roster"), unless and until such allocation is changed by the Commission or by the Division as provided for in the Association NPDES Permit. Allocations shall be expressed as pounds per year (lb/yr) of TN, and compliance with the Association TN Limitation and transfers of allocation among Neuse River Basin dischargers shall be evaluated in terms of the TN loading to the Estuary by converting the Discharge Load or Discharge Allocation, respectively, into the equivalent estuary loading using Transport Factors developed by the Division, as provided in the Association NPDES Permit.

(b) The Association shall maintain a list of the Discharge Allocations, the zone of the Basin in which each discharger is located, the Transport Factor applicable to each zone, and Estuary TN Allocations for each member.

Section 3. Changes in Association Estuary TN Allocation.

(a) The Co-Permittee members' Estuary TN Allocations and the Association Estuary TN Allocation shall change under the following conditions, and the Association

shall promptly inform the Division and apply for commensurate adjustments to the Co-Permittee Member's NPDES Permit and to the Association NPDES Permit.

- (1) Individual members joining or leaving the Association;
- (2) Purchase, sale or lease of allocation by the Association or individual members, including purchases from the Wetlands Restoration Fund or its successor;
- (3) Trading between the Association or its Co-Permittee Members and other discharger(s);
- (4) Elimination of a Co-Permittee Member's facility(ies), or consolidation of a member's or a non-Member's facility into a Co-Permittee Member's facility; or
- (5) Modification of the statute or rules regarding individual TN allocations or Transport Factors, or other circumstances which, due to regulatory requirements, warrant adjustment; provided such changes are consistent with the provisions of these By-Laws.

(b) In cases (1) through (3) above, the change shall become effective January 1 of the calendar year immediately following notification by the Association. The Association shall notify the Division of any such change in its August 31 report to the Division and request that the Co-Permittee Member's Estuary TN Allocation and the Association Estuary TN Allocation be adjusted by the Division on or before January 1 of the following year.

(c) When a Co-Permittee Member accepts wastewater from a non-Co-Permittee Member treatment facility under case (4) above such that the non-Co-Permittee

Member's discharge is eliminated, the non-member's TN allocation shall be added to the Co-Permittee Member's Estuary TN Allocation and to the Association Estuary TN Allocation effective at the end of the month in which the non-Co-Permittee Members' system ceased discharging. For the calendar year in which the discharge ceased, the amount of the non-Co-Permittee Member's allocation added to the Co-Permittee Member's Estuary TN Allocation and to the Association Estuary TN Allocation shall be prorated based on the number of months remaining in the calendar year. In subsequent years, the full amount of the non-Co-Permittee Member's allocation shall be added to the Co-Permittee Member's Estuary TN Allocation and the Association Estuary TN Allocation.

(d) If the Division proposes any changes due to the situations in case (5) above, the Association may evaluate and comment on the proposed changes prior to adoption, and the Association may on behalf of its Co-Permittee Members challenge or contest such a change, which shall be considered a major modification; provided that such a challenge shall in no way affect an individual member's right to challenge the modification.

Section 4. Co-Permittee Member NPDES Permits.

(a) Individual NPDES permits will continue to be issued by the Division to Co-Permittee Members. Such permits will include an effluent limitation for TN (the "Co-Permittee Member TN Limitation") which shall be the same as the Discharge Allocation for the Co-Permittee Member except where more stringent limits are established consistent with the applicable law or rules, and which will remain in effect for

the 5-year term of the NPDES permits unless changed by the Division according to applicable NPDES permitting procedures or according to the Association NPDES Permit. The Co-Permittee Members' individual NPDES permits will also include conditions that will provisionally waive the Co-Permittee Member's TN Limitation so long as the permit holder is an active member of the Association and the Association complies with the Association Estuary TN Allocation.

Section 5. Association NPDES Permit.

(a) The Association shall hold, renew when necessary, and otherwise maintain a NPDES Permit for the collective TN Allocation of its members. The Association Permit shall include: an effluent limitation for TN (the "Association TN Limitation") which shall be the sum of all the Co-Permittee Member's TN Limitations; monitoring and reporting requirements; and other conditions necessary for implementation of the group compliance concept.

(b) The Association may submit an application to the Division for adjustment of the Association TN Limitation on or before August 31 of any calendar year based on factors set out in this Article VIII, Section 3 requesting that the Division modify the Association TN Limitation effective January 1 of the following calendar year as a minor modification.

(c) Co-Permittee Members and Monitoring Members shall monitor their individual discharges as specified in their respective individual NPDES permits. Sample frequency, type, and locations of monitoring are prescribed in the individual permits and

shall be reported to the Association on each Co-Permittee Member's discharge monitoring reports.

(d) The Association shall submit a year-end report and a mid-year report to the Division. The mid-year report is due by August 31, 2003 and each August 31 thereafter. The year-end report shall be submitted to the Division by February 28, 2004 and each February 28 thereafter. Both reports shall include the information specified in the Association Compliance Agreement and the Association Permit.

Section 6. Compliance with TN Limits.

(a) The Association's compliance with the Association TN Limitation shall be based on TN delivered to the Estuary during each calendar year starting with 2003.

(b) If the Association fails to meet the Association TN Limitation in any given calendar year, beginning with calendar year 2003, the Association shall make offset payments no later than May 1 of the following year at the cost effectiveness rate established for nutrient offset payments by the North Carolina Ecosystem Enhancement Program, which may vary for different areas within the Neuse River Basin, for each excess pound based on loading at the estuary or such other rate as may be adopted by the Commission in 15A NCAC 2B .0240.

(c) Any offset payment for which the Association becomes liable for failure to meet the Association TN Limitation in a calendar year shall be paid by the Co-Permittee Members who exceed their Co-Permittee Member TN Limitation in the same year ("Non-Complying Co-Permittee Members"). Each Non-Complying Co-Permittee

Member shall pay a percentage of the offset payment equal to the percentage such Non-Complying Co-Permittee Member's exceedance is of the total exceedance for which the offset payment is made. The Board may establish guidelines whereby other penalties for which the Association becomes liable may be assessed against Members responsible for such violation(s).

[The following policy or procedure was adopted June 17, 2003.] The Co-Permittee Member(s) responsible for violations of reporting requirements or other violations not related to exceedance of the Association's TN allocation shall pay or share paying the entire penalty.

(d) The Association may consider adopting uniform TN concentration limits or TN allocations for its Co-Permittee Members different from the allocations set out on the Association Roster for assessing off-set payments or penalties or for other internal operating functions; provided that such TN concentration limits or changes in allocation shall be effective only for such internal functions as the Association is authorized to conduct and shall in no way change or affect allocations established by the Division. The Association also may consider establishing uniform guidelines for assessing penalties against Co-Permittee Members who exceed their Co-Permittee Member TN Limitation or any concentration limit or alternative allocation adopted by the Association pursuant to these By-Laws.

[The following policy or procedure was adopted June 17, 2003.] The assessment for an individual Co-Permittee Member exceeding its estuary allocation shall be one-fourth of the cost effectiveness rate for nutrient offset payments for a Co-Permittee Member's first annual exceedance, one-half for the second annual exceedance, three-fourths for the third annual exceedance and 100% afterwards. This assessment shall apply for an exceedance of an individual allocation in the year(s) in which the Association is compliant with its allocation and also in years when it exceeds its allocation, however in years that the Association exceeds its

allocation, any amount paid by an individual discharger as its share of the Association penalty share be credited to the assessment.

[The following policy or procedure was adopted June 17, 2003.] The assessment will be accounted for separately and made available to the Co-Permittee member that paid it to use for wastewater treatment plant improvements, provided that a plan for such improvements is presented to and approved by the NRCA as being reasonably designed to address the TN exceedence. The assessment will be repaid to the member once the project is completed and the member achieves compliance. There should be an annual progress check by the NRCA to ensure that the project remains on the approved schedule.

[The following policy or procedure was adopted June 17, 2003.] The NRCA should retain 20% of the assessment paid by a Co-Permittee Member to cover its administrative expenses.

[The following policy or procedure was adopted June 17, 2003.] The amount of the assessment should be based on excess pounds discharged at the end of the pipe, not the excess pounds delivered to the estuary.

[The following policy or procedure was adopted June 17, 2003.] This assessment should not become effective until the year 2004.

[The following policy of procedure was adopted May 01, 2011.] The cost effectiveness rate for nutrient offset payments shall be the rate established by the North Carolina Ecosystem Enhancement Program (the "EEP") which may vary for different areas within the Neuse River Basin.

(e) A Co-Permittee Member may be removed by the Board for excessive violations of its Co-Permittee Member TN Limitation; provided that before a Co-Permittee Member shall be removed the Association shall provide such Co-Permittee Member notice that removal is being considered, which notice shall include a description of the reason for removal, and shall allow the Co-Permittee Member one year to correct or achieve substantial progress in correcting the violation.

(f) Any member that leases nitrogen to comply with its end of pipe nitrogen allocation will not be subject to the Association's assessment policy but may be subject to action under Subsection (e) of this Section 6 for excessive violations of its nitrogen

allocation.

Section 7. Transfers of TN.

(a) The Association shall adopt rules and procedures and establish a framework to encourage the transfer of TN allocation by Co-Permittee Members in a manner that is cost effective and that provides incentives for TN reductions that will be most beneficial to the Neuse Estuary. To this end, the Association may consider establishing a uniform exchange rate to be used by Co-Permittee Members in the transfer of units of TN based upon the estuary loading rate of the Co-Permittee Members.

(b) Co-Permittee Members may transfer all or a portion of their allocation freely with other Co-Permittee Members, including non-point sources if permitted by the Commission, and may obtain TN allocation from non-members of the Association or Non-Co-Permittee Members, provided that the amount of credit or loss of TN shall be calculated according to any exchange rate adopted by the Association hereunder for purposes of the Association's internal procedures and for purposes of adjustments to the Non-Co-Permittee Member's Estuary TN Allocation and TN Limitation. However, Members shall not transfer any portion of their TN Allocation to any person who is not a member of the Association; except that this provision shall not prohibit any transfer made pursuant to an enforceable obligation under a contract that was entered into prior to June 27, 2002 and that was disclosed to the Association by the Member making the transfer prior to joining the Association.

(c) Any member proposing to transfer TN shall notify the Association at least sixty (60) days before such transfer is to become effective; provided that prior approval of the Association shall not be required for any such transfer. With such notification the member shall provide the Association a binding written agreement containing the terms of the transfer and verifying that it is completed and binding (the “Allocation Transfer Agreement”).

(d) The Association shall make the appropriate adjustment in any Co-Permittee Member’s Estuary TN Allocation as of the effective date of any transfer of which the Association has received proper notification hereunder (the “Adjusted TN Allocation”). The Adjusted TN Allocation shall be used thereafter by the Association in determining compliance, penalty amounts, or any other function of the Association that involves the Co-Permittee Member’s Allocation.

(e) The Association shall maintain accurate records of all transfers of nitrogen allocation affecting Co-Permittee Members and shall include in the year-end and mid-year reports required hereunder a description of each transfer that has taken place since the last such report.

(f) If a member’s membership in the Association is terminated for any reason whatsoever including, without limitation, dissolution of the Association, the Association shall recognize such member’s right to retain its Adjusted TN Allocation and all associated benefits and obligations, unless otherwise provided in the Allocation Transfer Agreement, and the Association shall make its best efforts to ensure that the Division recognizes that right.

ARTICLE IX

CONTRACTS, LOANS, DEPOSITS, CHECKS, DRAFTS, ETC.

Section 1. Contracts. Except as otherwise provided in these By-Laws, the Board may authorize any officer or officers, agent or agents to enter into any contract or to execute or deliver any instrument on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks or trust companies or with such bankers or other depositories as the Board may select, or as may be selected by any officer or officers, agent or agents of the Association to whom such power may from time to time be given the Board.

Section 4. Checks, Drafts, Etc. All notes, drafts, acceptances, checks and endorsements or other evidences of indebtedness shall be signed by the President or the Vice President and by the Secretary or the Treasurer, or in such other manner as the Board from time to time may determine. Endorsements for deposit to the credit of the Association in any of its duly authorized depositories will be made by the President or Treasurer or by any officer or agent who may be designated by resolution of the Board in such manner as such resolution may provide.

[The following policy/procedure was adopted May 03, 2012]

The Board hereby determines that any note, acceptance, check, or other endorsement for an amount of \$10,000.00 or less may be signed by only the Secretary or Treasurer upon receiving written approval from any one of the other three officers.

Section 5. Gifts. The Board may accept on behalf of the Association any grant, appropriation, contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Association.

ARTICLE X

INDEMNIFICATION

Section 1. Officer or Director Indemnification: Each person who was or is a party or is threatened to be a party to or is involved in any action, suit, or proceeding, whether civil, criminal, or administrative (hereinafter, a "proceeding") by reason that he is or was a director or officer of the Association, where the basis of such proceeding is alleged action in an official capacity as a director or officer, shall be indemnified and held harmless by the Association to the fullest extent of the insurance coverage purchased by the Association against all expense, liability and loss (including attorney's fees, judgments, fines, excise tax or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnifications shall continue as to a person who has ceased to serve in the capacity that initially entitled such person to indemnification hereunder. The Association shall indemnify a person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board.

The Association shall indemnify a person only if such person's actions or omissions at issue in the action complied with all obligations under the By-Laws.

Section 2. Notice to Members: If the Association indemnifies or advances expenses to an officer or director in connection with a proceeding by or in the right of the Association, the Association shall give notice of the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

Section 3. Insurance: The Association may maintain insurance, at its expense, to protect itself and any person who is or was serving as a director, officer, employee, or agent of the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Corporate Seal. The corporate seal shall be in such form as shall be approved from time to time by the Board.

Section 2. Fiscal Year. The fiscal year of the Association shall be established from time to time by resolution of the Board.

Section 3. Amendment to By-Laws. These By-Laws may be amended by a majority of two-thirds (2/3) of the Directors authorized to vote and present at a meeting (provided a quorum is present); provided, however, that at least ten (10) days notice in writing shall be given of the intention to amend the By-Laws at such meeting; and such notice shall contain or be accompanied by a copy or summary of the amendment or state the general nature of the proposed amendment.

Section 4. Books and Records. The Association shall keep a copy of the following records at the Association's principal office:

(a) Its Articles of Incorporation or restated Articles of Incorporation and all amendments to them currently in effect.

(b) Its By-Laws or restated By-Laws and all amendments to them currently in effect.

(c) Resolutions adopted by members or the Board relating to the number or classification of Directors or to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members.

(d) The minutes of all membership meetings, and records of all actions taken by the members without a meeting pursuant to §55A-7-04 or §55A-7-08 of the Act, for the past (3) three years.

(e) A list of the names and business addresses of its current members, Directors and officers.

Section 5. Meeting Regulation. All meetings of the directors and members (including annual, special and other) and of any committee shall be governed by Robert's Rules of Order.

Section 6. Gender. As used in these By-Laws, the masculine gender shall be deemed to include the feminine and the feminine the masculine

Section 7. Interpretation of By-Laws. These By-laws shall be construed and interpreted under the laws of the State of North Carolina. Notwithstanding the foregoing, however, these By-laws shall at all times be construed and interpreted as consistent with all federal laws and regulations governing the activities of the Association and governing the tax exempt status of the corporation, and in the event that these By-laws may be inconsistent with such laws and regulations, the same shall be deemed amended to comply therewith. Whenever used in these By-laws, unless the context otherwise indicates, a pronoun in the masculine gender shall include the feminine gender and the singular shall include the plural, and vice versa.