

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-355
HOUSE BILL 570**

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF THE ADMINISTRATIVE RULE ENTITLED "TAR-PAMLICO RIVER BASIN-NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: AGRICULTURAL NUTRIENT CONTROL STRATEGY" WITH CERTAIN MODIFICATIONS, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO INCORPORATE THESE MODIFICATIONS INTO A REVISED ADMINISTRATIVE RULE, AND TO DIRECT THE SOIL AND WATER CONSERVATION COMMISSION TO APPROVE BEST MANAGEMENT PRACTICES AND A NUTRIENT LOADING POINT SYSTEM FOR PASTURE-BASED PRODUCTION AND MANAGEMENT OF LIVESTOCK.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 150B-21.3(b), 15A NCAC 2B .0256, (Tar-Pamlico River Basin-Nutrient Sensitive Waters Management Strategy: Agricultural Nutrient Control Strategy), as adopted by the Environmental Management Commission on 12 October 2000 and approved by the Rules Review Commission on 20 November 2000, shall become effective on 1 September 2001 and shall be implemented as provided in Sections 2 through 4 of this act.

SECTION 2.(a) On or before 1 November 2001, a Local Advisory Committee shall be appointed as provided in this section in each county or watershed, as specified by the Basin Oversight Committee, within the Tar-Pamlico River Basin. The Local Advisory Committees shall terminate upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

SECTION 2.(b) Each Local Advisory Committee shall consist of:

- (1) One representative of the local Soil and Water Conservation District.
- (2) One local representative of the Natural Resources Conservation Service of the United States Department of Agriculture.
- (3) One local representative of the North Carolina Cooperative Extension Service.
- (4) One local representative of the North Carolina Division of Soil and Water Conservation.
- (5) One local representative of the North Carolina Department of Agriculture and Consumer Services.
- (6) At least five, but not more than 10 farmers who reside in the county or watershed.

SECTION 2.(c) The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall jointly appoint members described in subdivisions (1) through (4) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivisions (5) and (6) of subsection (b) of this section. The Commissioner of Agriculture shall appoint the members described in subdivision (6) of subsection (b) of this section from persons

nominated by nongovernmental organizations whose members produce or manage significant agricultural commodities in each county or watershed.

SECTION 2.(d) Members of the Local Advisory Committees serve at the pleasure of their appointing authority.

SECTION 3.(a) For purposes of 15A NCAC 2B .0256 and this act, "agricultural operation" is an activity that relates to any of the following pursuits:

- (1) The commercial production of crops or horticultural products other than trees.
- (2) Research activities in support of the commercial production of crops or horticultural products other than trees.
- (3) The production or management of any of the following number of livestock or poultry, excluding nursing young:
 - a. 20 or more horses.
 - b. 20 or more cattle.
 - c. 150 or more swine.
 - d. 120 or more sheep.
 - e. 130 or more goats.
 - f. 650 or more turkeys.
 - g. 3,500 or more chickens.
 - h. A number of any single species or combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.
- (4) The onetime harvest of trees on land within a riparian buffer described in 15A NCAC 2B .0259 that is open farmland on 1 September 2001. This onetime harvest of trees may be conducted within one tree cropping interval only under a verifiable farm plan that (i) receives final approval on or after 1 September 2001 by a local agricultural agency and (ii) expressly allows the harvest of trees no earlier than 10 years after the trees are established and the return of the land to another agricultural pursuit.
- (5) The onetime harvest of trees on land within a riparian buffer described in 15A NCAC 2B .0259 that has trees established under an agricultural incentive program as of 1 September 2001.

SECTION 3.(b) All harvesting of trees shall comply with Forest Practices Guidelines Related to Water Quality codified at 15A NCAC 11. The nutrient removal functions that were provided by trees prior to their harvest shall be replaced by other measures that are implemented by the owner of the land from which the trees are harvested.

SECTION 3.(c) As used in 15A NCAC 2B .0256 and this act:

- (1) "Agricultural incentive program" means any of the following programs and any predecessor program to any of the following programs:
 - a. Agriculture Cost Share Program for Nonpoint Source Pollution Control established by G.S. 143-215.74.
 - b. Conservation Reserve Enhancement Program established by 7 Code of Federal Regulations Part 1410 (1 January 2001 Edition) and 15A NCAC 6G .0101 through 15A NCAC 6G .0106.
 - c. Conservation Reserve Program established by 7 Code of Federal Regulations Part 1410 (1 January 2001 Edition).
 - d. Environmental Quality Incentives Program established by 7 Code of Federal Regulations Part 1466 (1 January 2001 Edition).
 - e. Wetlands Reserve Program established by 7 Code of Federal Regulations Part 1467 (1 January 2001 Edition).

- f. Wildlife Habitat Incentives Program established by 7 Code of Federal Regulations Part 636 (1 January 2001 Edition).
- (2) "Commercial" means a pursuit conducted primarily for financial gain or profit.
 - (3) "Local agricultural agency" means the North Carolina Cooperative Extension Service, the Farm Services Agency of the United States Department of Agriculture, the Natural Resources Conservation Service of the United States Department of Agriculture, a Soil and Water Conservation District created pursuant to G.S. 139-5, or their successor agencies.
 - (4) "Open farmland" means the footprint of land used for pasture or for crops or horticultural products other than trees. Open farmland may contain scattered trees if an open canopy exists on 1 September 2001 as determined by the most recent aerial photographs taken for the Farm Services Agency of the United States Department of Agriculture.
 - (5) "Tree" means a woody plant with a diameter equal to or greater than five inches when measured at a height of four and one-half feet above the ground.
 - (6) "Tree cropping interval" means the time required to establish and grow trees that are suitable for harvesting. The tree cropping interval shall be set out in the farm plan and shall be no less than 10 years after the trees are established.

SECTION 4.(a) No person who is subject to 15A NCAC 2B .0256 shall be required to implement a best management practice for pasture-based production or management of livestock until the Soil and Water Conservation Commission has approved best management practices for pasture-based production or management of livestock and until the Environmental Management Commission approves a nutrient loading accounting methodology that includes credit for reductions in nutrient loading that have been achieved since 1 January 1992.

SECTION 4.(b) The Soil and Water Conservation Commission shall approve initial best management practices for pasture-based production or management of livestock no later than 1 September 2002. The Soil and Water Conservation Commission shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of best management practices.

SECTION 4.(c) The Soil and Water Conservation Commission shall approve a point system applicable to pasture management practices no later than 1 September 2002. The Soil and Water Conservation Commission shall approve the point system based on recommendations from the Technical Review Committee established by G.S. 143-215.74B. The Technical Review Committee shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of recommendations to the Soil and Water Conservation Commission regarding the point system. The Soil and Water Conservation Commission may make subsequent additions or amendments to the point system only by following the process outlined in this section. The objectives of the point system shall be to identify pasture management practices that either individually or in combination represent the best reasonable approximation of a thirty percent (30%) reduction in nitrogen loading and no increase in phosphorus loading as compared to the nutrient loading that would occur in the absence of those practices and to determine the target number of points that would reasonably best approximate that loading. The point system shall identify a range of pasture management practice types that provides point values both greater than and less than this target number. An individual who accumulates and maintains the target number of points shall not be subject to any additional requirement applicable to that individual's pasture-based production or management of livestock under 15A NCAC 2B .0256(c).

SECTION 4(d). The Basin Oversight Committee shall incorporate the point system into the accounting methodology described in 15A NCAC 2B .0256(f)(3), and Local Advisory Committees shall account for progress by pasture operations using the point system, together with the percentage nitrogen reductions accomplished by non-pasture agricultural operations, as part of its annual reporting required by 15A NCAC 2B .0256(g)(4). In applying the accounting methodology, Local Advisory Committees shall credit only pasture management practices implemented after 1 January 1992 toward achievement of nitrogen and phosphorus goals.

SECTION 4(e) The Basin Oversight Committee shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons in the development of the nutrient loading accounting methodology described in 15A NCAC 2B .0256(f)(3). The Environmental Management Commission shall approve the nutrient loading accounting methodology no later than 1 March 2003.

SECTION 4(f) As used in this section, the phrase "shall involve persons engaged in pasture-based production or management of livestock and organizations that represent these persons" means involving those persons and organizations in a manner consistent with the procedures set out in the memorandum dated 16 November 1994 that appears as Page III-12 of the North Carolina Agriculture Cost Share Program Manual (July 1998 Edition) prepared by the Division of Soil and Water Conservation of the Department of Environment and Natural Resources.

SECTION 5(a) This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1(a).

SECTION 5(b) The Environmental Management Commission may adopt a temporary rule that incorporates the provisions of Sections 2 and 3 of this act. Notwithstanding G.S. 150B-21.1(d), a temporary rule adopted in accordance with this section shall remain in effect until a temporary or permanent rule adopted to replace the temporary rule becomes effective.

SECTION 5(c) If the Environmental Management Commission adopts a temporary rule as provided in subsection (b) of this section, the Commission may thereafter amend the temporary rule to revise the number of livestock or poultry that constitutes an agricultural operation by adopting a temporary rule. In revising the number of livestock or poultry that constitutes an agricultural operation, the Commission shall consider the behavioral characteristics of each species, equivalent nutrient production of each species, and other relevant factors. Prior to the adoption of a temporary rule under this subsection, the Commission shall publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed temporary rule may be addressed. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt a temporary rule is published in the North Carolina Register.

SECTION 6. Except as provided by Sections 2 and 3 of this act, this act does not limit the authority of the Environmental Management Commission to adopt rules to improve water quality and to limit nutrient loading from agricultural operations pursuant to Article 21 of Chapter 143 of the General Statutes.

SECTION 7. This act is effective when it becomes law. If the Environmental Management Commission adopts a temporary rule as provided in subsection (b) of Section 5 of this act, Sections 2 and 3 of this act expire when the temporary rule becomes effective. Section 4 of this act expires upon a finding by the Environmental Management Commission that the long-term maintenance of nutrient loads in the Tar-Pamlico River Basin is assured.

In the General Assembly read three times and ratified this the 1st day of August, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:42 a.m. this 10th day of August, 2001