

AGENDA

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

**February 7, 2019
City of Raleigh, N.C.
10:00 a.m.**

- **Welcome, Roll Call, and Introduction of Guests**
- **Approval of Minutes for November 1, 2018 – (AI) [Pages 2, 3]**
- **LNBA/NRCA Financials –**
 - * **November, December, 2018, and January, 2019 Treasurer’s Reports (AI) including Current YTD Expenditures [Donald, pages 4, 5]**
 - * **LNBA and NRCA FY 2019-20 Proposed Budget and Membership Fees (AI) [Finance Committee, Haywood, pages, 6 – 9]**
 - * **LNBA By-Law Revision for the Board’s Consideration (AI) [Dan, Haywood, page 10]**
 - * **City of Raleigh Request to Participate in Environment I Sampling Contract (AI) [T. J., Haywood, page 11]**
- **LNBA Sampling Report, November, December, 2018, and January, 2019 [Haywood, page 12]**
 - * **303(d) Presentation and Comments Submitted [Dan, Haywood, & Jay, pages 13-18]**
 - * **LNBA MOA with DWR Renewal**
- **Officer Nominating Committee Appointment - Dan**
- **Restoration Systems and HUC Nutrient Credit Statute Revision -**
- **Environmental Management Commission Approval of Nutrient Rules – [Dan, Haywood pages 19-24]**
 - * **Public Hearings set March 26th (Kinston) & 28th (Clayton)**
- **Legislative Considerations for the Long Session – [Dan, Haywood]**
- **Member Reports**
- **Next Meeting and Adjourn – Location/Date: To Be Determined May 2, 2019**
(AI) – Action Item

**Lower Neuse Basin Association®/Neuse River Compliance Association®
November 1, 2019 Meeting Minutes
City of Kinston, N.C.**

Attending:

Paul Ray	Town of Cary	Emily Elmore	City of Kinston
T. J. Lynch	City of Raleigh	Jeff White	Dow Dupont-Kinston
Barry Parks	City of Wilson	Chandra Farmer	Johnston County
Paul Allen	Town of Benson	Tony Hawkins	City of New Bern
David Hardin	Town of Apex	Dan Wall	Johnston County
Dan McLawhorn	City of Raleigh	Kenneth Stevens	City of Kinston
Chuck Smithwick	Contentnea MSD	Michael McAllister	Town of Kenly
James Carter	City of Havelock	James Warren	Town of Clayton
Glenn Dunn	Poyner & Spruill	Joe Pearce	Aqua, N.C.
Mike Wagner	City of Goldsboro	Steve Tedder	B & V & Tedder Farm Consulting
Mark Vander Borgh	DWR Water Science	Casey Garland	The Wooten Company
Haywood Phthisic	LNBA/NRCA		

The Chair, Dan McLawhorn, called the meeting to order and welcomed everyone. The roll was called and there were 14 of 18 members present representing the LNBA and 15 of 22 members present representing the NRCA. There was a quorum present for both associations. Guests were introduced and recognized.

Board Minutes – The Board Minutes from the September 6, 2018 meeting were presented and approved by the Boards.

Treasurer's Report - The Treasurer's Reports for September and October, 2018 were presented by Haywood in Donald Smith's absence. As of October 23rd, the LNBA account balances were \$209,304.02 and NRCA account balances are \$224,549.37. A year-to-date expenditure summary for FY 2018-19 was provided for the boards review. Barry Parks made a motion to approve the reports as presented, seconded by T. J. Lynch, and approved by the Boards.

LNBA Sampling Report – Work continues on the Lower Neuse River Monitoring Service Contract No. 5 with Environment I. Sample collection was completed by Environment 1 in September and October with many exceptions in the lower portion of the basin due to Hurricane Florence (see below), Data sets have been received through August, 2018 and loaded on the website. September sampling results are in final review. All invoices through September, 2018 have been processed and paid. Exceptions due to flood conditions occurred at the following sampling sites: J6010950, J6024000, J6044400, J6044500, J6055000, J6150000, J6250000, J7850000, and J8870000.

NRCA Draft Permit for 2019 - Haywood reported the NRCA's draft permit for 2019 had been received and was distributed to the membership. If anyone has any questions or comments, please forward to Haywood.

Nitrogen Leases for 2018 – Haywood noted that several members will need to lease nitrogen in 2018 and those leases must be executed by December 31st to be valid for 2018. If any members requires assistance please contact Haywood.

LNBA/NRCA Proposed Board Meeting Dates for 2019 – The proposed meeting dates for 2019 are: February 7th, May 2nd, September 5th, and November 7th. The February meeting is scheduled to meet at the Neuse River Resource Recovery Facility in Raleigh.

Algae Presentation – Mark Vander Borgh with the Division of Water Resources, Water Science Section made a presentation to the Board on algae in the state waters. Mark discussed the Algal Bloom Assessment Program the State has in place. For more information please view the presentation by clicking on this link: [Algal Bloom Assessment Program](#) .

Consulting Agreement for Consideration - The Boards were presented an opportunity to consider an employment agreement for upcoming interest of the associations. The Boards were asked if there was a motion to move to a closed session. T. J. Lynch made a motion to for the Boards to go into closed session, seconded by James Warren, and approved by the Board.

Member Reports – Members were given an opportunity to update the Boards on recent events including Hurricane Florence damage in the lower portions of the Neuse Basin.

The next meeting is scheduled for February 7, 2019 at 10:00 to be hosted by the City of Raleigh. With no further business, the meeting was adjourned.

DRAFT

Lower Neuse Basin Association, Inc. / Neuse River Compliance Association, Inc.

Treasurer's Report

12/17/2018

LNBA

Balance Forward: (checking per bank statement - 10/23/18)	Checking	\$	138,570.23
	Savings	\$	70,733.79
Debits:		\$	
PCi, Inc. (Oct., Nov., & Dec., 18 Invs)			5,344.35
Environment I, Inc. (Oct & Nov, 18 Invs)			22,962.18
Poyner & Spruill (Sept & Nov, 18 Invs)			847.29
MFG Consulting Inc. (Nov & Dec, 18 Invs)			200.00
Jewell Wiggins (990 tax return, 2017)			600.00
Bank Charges (checks & maintenance fees)			3.00
			<hr/>
Total Debits		\$	29,956.82
Credits:		\$	
Interest (checking)			49.94
Interest (savings)			94.05
Checking Account Balance (per bank statement - 1/28/19)		\$	108,663.35
LGCU Share Account Balance (savings account)			70,827.84
			<hr/>
Total LNBA Account Balance		\$	179,491.19

NRCA

Balance Forward: (per bank statement -10/23/18)	Checking	\$	112,188.52
	Savings		112,359.85
Debits:		\$	
PCi, Inc (Oct., Nov., & Dec., 18 Invs)			8,612.00
Poyner & Spruill (Sept & Nov, 18 Invs)			845.74
Jewell Wiggins (990 tax return, 2017)			600.00
Blanchard, Miller, Lewis, & Isley (Nov & Dec, 18 Invs)			5,000.00
NCDEQ (permit fee 2019)			3,440.00
MFG Consulting, LLC (Oct 18 Inv)			100.00
Bank Charges (checks & maintenance fees)			3.00
			<hr/>
Total:		\$	18,600.74
Credits:		\$	
Transfer to Savings			-
Interest (Savings)			149.40
Interest (Checking)			40.94
Account Balance (per bank statement -1/28/19)	Checking	\$	93,628.72
LGCU Share Account Balance (savings account)	Savings		112,509.25
			<hr/>
Total NRCA Account Balance		\$	206,137.97

Current Expenditures for FY 2018-19

Date: 1/15/2019

LNBA	Monitoring	ED Services	Training	Admin	Legal	Web Services	Consultant	Total
July, 2018	\$ 7,654.06	\$ 2,432.21	\$ 880.64	\$ 1.00	\$ -	\$ 100.00	\$ 560.00	\$ 11,627.91
August	7,654.06	1,278.59	-	1.00	-	-	-	8,933.65
September	7,654.06	1,714.72	-	1.00	330.55	100.00	-	9,800.33
October	7,654.06	2,254.47	-	1.00	-	-	-	9,909.53
November	7,654.06	1,658.68	-	601.00	516.74	100.00	-	10,530.48
December	7,654.06	1,431.20	-	100.00	-	100.00	-	9,285.26
January, 2019	-	-	-	-	-	-	-	-
February	-	-	-	-	-	-	-	-
March	-	-	-	-	-	-	-	-
April	-	-	-	-	-	-	-	-
May	-	-	-	-	-	-	-	-
June	-	-	-	-	-	-	-	-
Total	\$ 45,924.36	\$ 10,769.87	\$ 880.64	\$ 601.00	\$ 847.29	\$ 400.00	\$ 560.00	\$ 59,983.16
Budget	\$ 94,800.00	\$ 21,500.00	\$ 1,500.00	\$ 1,000.00	\$ 10,000.00	\$ 2,500.00	\$ 3,500.00	\$ 134,800.00

44%

NRCA	Permit/Grant	ED Services	Training	Admin	Legal	Web Services	Consultant	Total
July, 2018	\$ -	\$ 2,432.00	\$ 948.89	\$ 1.00	\$ -	\$ -	\$ 560.00	\$ 3,941.89
August	-	1,919.00	-	1.00	-	100.00	-	2,020.00
September	-	2,572.00	-	1.00	329.00	-	-	2,902.00
October	-	3,382.00	-	100.00	-	100.00	-	3,582.00
November	3,440.00	3,080.00	-	601.00	3,016.74	-	-	10,137.74
December	-	2,150.00	-	-	2,500.00	-	-	4,650.00
January, 2019	-	-	-	-	-	-	-	-
February	-	-	-	-	-	-	-	-
March	-	-	-	-	-	-	-	-
April	-	-	-	-	-	-	-	-
May	-	-	-	-	-	-	-	-
June	-	-	-	-	-	-	-	-
Total	\$ 3,440.00	\$ 15,535.00	\$ 948.89	\$ 601.00	\$ 5,845.74	\$ 200.00	\$ 560.00	\$ 27,130.63
Budget	\$ 8,500.00	\$ 40,000.00	\$ 1,500.00	\$ 2,500.00	\$ 20,000.00	\$ 1,500.00	\$ 3,500.00	\$ 77,500.00

35%

FY 2019–20 Budget and Finance Committee Recommendation

2/05/19

Finance Committee Members - Barry Parks, City of Wilson; Chuck Smithwick, Contentnea MSD; and Donald Smith, Town of Cary; and Haywood Phthisic, Executive Director.

The committee (through email discussion and conference call) reviewed the draft budget for FY 2019-20 for the LNBA and NRCA.

LNBA Budget:

* No increase in the proposed budget from FY 2019-20. Membership dues will change for the upcoming fiscal year because two (2) members increased their permitted flow in 2018: the City of Raleigh increased the Neuse River facility 15.0 mgd and the Town of Fuquay-Varina increased the permitted flow by 2.0 mgd.

NRCA Budget:

* No increase the proposed budget from FY 2019-20. Membership dues will vary from FY 2019-20 because of fluctuations in discharged nitrogen pounds. Budget includes funding ModMon Program the same level as previous year (\$5,000 from fund balance).

After review and discussion, the committee recommends the following for consideration by the Board:

LNBA - Recommends the approval of the proposed FY 2019-20 budget and membership fees as presented.

NRCA - Recommends the approval of the proposed FY 2018-19 budget and membership fees as presented.

Proposed LNBA/NRCA FY 2019 -20 BUDGET			
			Date: 1/28/19
Lower Neuse Basin Association			
Expenditures	FY 17-18	Current	Proposed
	Actual	FY 18-19 Budget	FY 19-20 Budget
Water Sampling Contract	\$ 89,661.84	\$ 92,400.00	\$ 92,000.00
Consultant Services	21,892.28	34,900.00	34,900.00
Administrative Costs/Website	612.00	2,500.00	2,500.00
Educational Training	893.51	1,500.00	1,500.00
Metals Monitoring	-	3,500.00	3,900.00
Total	\$ 113,059.63	\$ 134,800.00	\$ 134,800.00
Revenues			
Membership Dues	\$ 134,800.00	\$ 134,800.00	\$ 134,800.00
Fund Balance	-	-	-
Total	\$ 134,800.00	\$ 134,800.00	\$ 134,800.00
Cash Balance by Period:	\$ 115,188.65	\$ 190,288.50	
Neuse River Compliance Association			
	FY 17-18	Current	Proposed
	Actual	FY 18-19 Budget	FY 19-20 Budget
Consultant Services	\$ 43,814.94	\$ 65,000.00	\$ 65,000.00
Administrative Costs/Website	1,412.00	2,500.00	2,500.00
Educational Training	935.82	1,500.00	1,500.00
MODMON Research	5,000.00	5,000.00	5,000.00
DWQ Permit Fee	3,400.00	3,500.00	3,500.00
Total	\$ 54,562.76	\$ 77,500.00	\$ 77,500.00
Revenues			
Membership Dues	\$ 72,500.00	\$ 72,500.00	\$ 72,500.00
Fund Balance	70,000.00	-	5,000.00
Total	\$ 142,500.00	\$ 72,500.00	\$ 77,500.00
Cash Balance by Period:	\$ 165,742.91	\$ 211,305.06	
Total for LNBA/NRCA	\$ 167,622.39	\$ 207,300.00	\$ 212,300.00

Current Expenditures for FY 2017-18

Date: 7/10/2018

LNBA	Env. I	PCI	Training	Admin	P & S	MFG, LLC	Sauber	Total
July, 2017	\$ 7,289.58	\$ 1,183.88	\$ 893.51	\$ 1.00	\$ -	\$ 100.00	\$ -	\$ 9,467.97
August	7,289.58	1,633.90	-	1.00	-	-	-	8,924.48
September	7,289.58	1,578.76	-	1.00	-	-	-	8,869.34
October	7,289.58	1,566.31	-	1.00	1,235.96	100.00	-	10,192.85
November	7,289.58	1,796.46	-	601.00	-	75.00	420.00	10,182.04
December	7,289.58	1,610.62	-	1.00	-	75.00	-	8,976.20
January, 2018	7,654.06	1,477.79	-	1.00	122.10	-	-	9,254.95
February	7,654.06	1,601.66	-	1.00	-	120.00	210.00	9,586.72
March	7,654.06	1,805.80	-	1.00	-	-	-	9,460.86
April	7,654.06	1,474.03	-	1.00	-	150.00	-	9,279.09
May	7,654.06	1,870.87	-	1.00	-	175.00	-	9,700.93
June	7,654.06	1,459.14	-	1.00	-	50.00	-	9,164.20
Total	\$ 89,661.84	\$ 19,059.22	\$ 893.51	\$ 612.00	\$ 1,358.06	\$ 845.00	\$ 630.00	\$ 113,059.63
Budget	\$ 94,800.00	\$ 21,500.00	\$ 1,500.00	\$ 1,000.00	\$ 10,000.00	\$ 2,500.00	\$ 3,500.00	\$ 134,800.00

84%

NRCA	Permit/Grant	PCI	Training	Admin	P & S	MFG, LLC	Sauber	Total
July, 2017	\$ -	\$ 2,199.00	\$ 935.82	\$ 1.00	\$ 61.05	\$ -	\$ -	\$ 3,196.87
August	-	3,033.00	-	1.00	-	100.00	-	3,134.00
September	-	2,933.00	-	1.00	1,770.45	100.00	-	4,804.45
October	-	2,907.00	-	1.00	885.23	125.00	-	3,918.23
November	-	3,335.00	-	601.00	1,556.78	-	420.00	5,912.78
December	3,400.00	2,990.00	-	1.00	305.25	50.00	-	6,746.25
January, 2018	-	2,745.00	-	1.00	-	-	-	2,746.00
February	-	2,973.00	-	1.00	-	-	210.00	3,184.00
March	-	3,353.00	-	1.00	641.03	100.00	-	4,095.03
April	-	2,738.00	-	1.00	-	150.00	-	2,889.00
May	5,000.00	3,200.00	-	1.00	2,497.00	175.00	280.00	11,153.00
June	-	2,709.00	-	1.00	183.15	-	-	2,893.15
Total	\$ 8,400.00	\$ 35,115.00	\$ 935.82	\$ 612.00	\$ 7,899.94	\$ 800.00	\$ 910.00	\$ 54,672.76
Budget	\$ 8,500.00	\$ 40,000.00	\$ 1,500.00	\$ 2,500.00	\$ 20,000.00	\$ 1,500.00	\$ 3,500.00	\$ 77,500.00

71%

Proposed LNBA/NRCA Membership Dues for Fiscal Year 2019 -2020

Date: 1/28/19

MEMBER	Permitted Flow (MGD)	2019-20 LNBA Base Fee	2019-20 LNBA (Q)	2019-20 Total LNBA Dues	2019-20 NRCA Base Fee	18 - MidYear EOP Pounds of TN	2019-20 NRCA (\$/lbs.)	2019-20 Total NRCA Dues	Total Dues FY 2019-20
Town of Fuquay-Varina*	3.117	\$ 250.00	\$ 2,155.15	\$ 2,405.15	\$ -	0	\$ -	\$ -	\$ 2,405.15
City of Havelock	2.250	250.00	1,555.69	1,805.69	250.00	24,228	1,946.68	2,196.68	4,002.37
Duke Energy Progress	2.056	250.00	1,421.56	1,671.56	250.00	188	15.11	265.11	1,936.66
Dupont-Kinston, Inc.	3.600	250.00	2,489.11	2,739.11	250.00	1,795	144.23	394.23	3,133.33
City of Kinston	11.850	250.00	8,193.32	8,443.32	250.00	33,769	2,713.28	2,963.28	11,406.60
Johnston County	9.500	250.00	6,568.48	6,818.48	250.00	41,384	3,325.14	3,575.14	10,393.62
City of Goldsboro	14.200	250.00	9,818.15	10,068.15	250.00	55,985	4,498.30	4,748.30	14,816.45
City of LaGrange	0.750	250.00	518.56	768.56	250.00	6,198	498.00	748.00	1,516.56
Contentnea MSD	3.500	250.00	2,419.97	2,669.97	250.00	8,177	657.01	907.01	3,576.98
Town of Kenly	0.630	250.00	435.59	685.59	250.00	9,424	757.20	1,007.20	1,692.80
City of Wilson	14.000	250.00	9,679.87	9,929.87	250.00	54,547	4,382.76	4,632.76	14,562.63
Town of Benson	1.900	250.00	1,313.70	1,563.70	250.00	8,187	657.81	907.81	2,471.51
Town of Farmville	3.500	250.00	2,419.97	2,669.97	250.00	5,369	431.39	681.39	3,351.36
Town of Cary	24.800	250.00	17,147.19	17,397.19	250.00	65,357	5,251.33	5,501.33	22,898.52
City of Raleigh	80.200	250.00	55,451.81	55,701.81	250.00	406,715	32,678.88	32,928.88	88,630.69
City of New Bern	6.500	250.00	4,494.22	4,744.22	250.00	23,974	1,926.27	2,176.27	6,920.50
Town of Apex	3.600	250.00	2,489.11	2,739.11	250.00	11,328	910.19	1,160.19	3,899.29
Town of Clayton	2.500	250.00	1,728.55	1,978.55	250.00	20,121	1,616.69	1,866.69	3,845.24
SGWASA**					250.00	8,640	694.21	944.21	944.21
Neuse Colony, Aqua, NC					250.00	7,638	613.70	863.70	863.70
MCAS Cherry Point**					250.00	25,137	2,019.72	2,269.72	2,269.72
Carolina Water Service					250.00	13,903	1,117.08	1,367.08	1,367.08
Craven County					250.00	1805	145.03	395.03	395.03
Total Flow NRCA	185.336	\$ 4,500.00	\$ 130,300.00	\$ 134,800.00	\$ 5,500.00	833,869	\$ 67,000.00	\$ 72,500.00	\$ 207,300.00
Total Flow LNBA	188.453			\$ 134,800.00				\$ 72,500.00	\$ 207,300.00

* indicates LNBA member only

** indicates NRCA member only

Lower Neuse Basin Association

By-Law Revision for Board Consideration

Article VIII

Contracts, Checks, Deposits, and Membership Dues

Section 4. Dues and Special Assessments: The Board shall adopt annual dues to be paid by Members. The total amount of dues shall be adequate at least to pay expenses of the Association as established in the annual budget. The Executive Director of the Association shall cause the dues invoices to be delivered to the members on or after July 1st of each year. The dues shall be due for payment within 30 days after the statement is delivered. The Board may include a minimum per member charge which is uniform for all members and shall set the remainder of the dues to be paid by members in a manner which is proportionate to the amount of flow that a member is permitted to discharge under its NPDES permit. The Board may adopt a different membership dues structure for the proportionate part of the dues without amending the bylaws so long as the revised structure is proportionate based on the discharges of the members under the NPDES permits. In addition, the Board may impose special assessments as a part of the dues of a member. Special assessments may be made for undertaking special initiatives or projects from time to time subject to approval of the Board and each member subject to the special assessment. No special assessment will be due and payable unless it is approved by a majority of the Board in attendance at a properly noticed and called meeting at which a quorum of the Board is present. The Board may specify a different payment schedule as deemed appropriate for a special assessment.”

H Phthisic

From: Lynch, TJ <TJ.Lynch@raleighnc.gov>
Sent: Monday, February 4, 2019 1:48 PM
To: H Phthisic
Subject: Request to Combine Sampling for City of Raleigh

Hello Haywood,

As you know, the City of Raleigh currently has sampling requirements for monitoring secondary and cumulative impacts associated with the DEB WTP. To date, the City has piggybacked on the existing LNBA contract with Environment One for that sampling. Given the benefits of the piggyback relationship for the City of Raleigh and the impacts it would have on the LNBA to remove these sites from the LNBA's MOU with the NC Department of Environmental Quality Division of Water Resources, I am requesting that the LNBA approve the combination of the required sampling sites into one contract with Environment One going forward and charge the City of Raleigh for the sampling and analysis costs through the assessment of annual dues.

Sincerely,

T.J. Lynch

Assistant Director
Public Utilities Department
City of Raleigh

Lower Neuse Basin Association ®

TO: Board Members

FROM: Water Sampling Contract Coordinator

SUBJECT: Sampling/Monitoring Report for February 7, 2019 Board Meeting

DATE: February 4, 2019

Work continues on the Lower Neuse River Monitoring Service Contract No. 5 with Environment I. All sampling was completed by Environment 1 in November, 2018, December, 2018, and January, 2019. Data sets have been received through November, 2018 and loaded on the website. December sampling results are in data review. All invoices through December, 2018 have been processed and paid.

There were sampling exceptions during this period:

11/27/2018, J6044500 (Bear Creek at SR 1311 (Bear Creek Road near Kinston) bridge replacement/construction, unable to access.

12/14/2018, J6044500 (Bear Creek at SR 1311 (Bear Creek Road near Kinston) bridge replacement/construction, unable to access.

1/30/2019, J6044500 (Bear Creek at SR 1311 (Bear Creek Road near Kinston) bridge replacement/construction, unable to access.

Lower Neuse Basin Association®
Neuse River Compliance Association®

Post Office Box 1410
Clayton, North Carolina 27528 – 1410

January 18, 2019

Mr. J.D. Solomon, Chairman
and EMC Commissioners
N.C. Environmental Management Commission
1611 Mail Service Center
Raleigh, N.C. 27699 - 1617

Dear Chairman Solomon and Commissioners:

I am writing this letter as chairman of the Lower Neuse Basin Association (“LNBA”) and the Neuse River Compliance Association (“NRCA”). On behalf of the Associations, I respectfully submit the attached comments on the Draft 2018 North Carolina 303(d) List and Integrated Report.

Thank you for the opportunity to submit these comments. If you require additional information or have questions about our proposal please contact me or Haywood Phthisic, LNBA/NRCA Executive Director.

Sincerely,



Daniel F. McLawhorn, Chairman

cc: LNBA/NRCA Boards
Haywood Phthisic

LNBA and NRCA Comments for the 2018 303(d) List and Integrated Report

1. The Draft 2018 303(d) and Integrated Report information indicates that Chlorophyll-a is an aquatic life standard. There is no technical support for this conclusion. Aquatic life standards normally use detriments to sensitive species thresholds (plus a safety factor) to establish a water quality standard. Chlorophyll-a is an indicator of biological productivity not an aquatic life standard. Chlorophyll-a is best considered a water quality standard for the protection of designated use impairment – aesthetics and recreation. Chlorophyll-a is not toxic. Chlorophyll-a has no levels associated of endangerment of sensitive species. This is an important but minor change. It is important because EPA has established detailed procedures for aquatic life standards that do NOT include chlorophyll-a.

2. The EMC has not addressed the establishment of procedures for determining 303(d) Assessment Units (AU's). Changes to Assessment Units are not explained and result is an evaluation process that isolates individual monitoring stations rather than aggregating monitoring locations for a more complete representation of the Assessment Unit with larger data sets. Assessments Units are segments of streams, lakes, or estuaries where monitoring data from different stations provide a representative perspective of the quality of a particular waterbody. Determining the geographical extent of AU's can be the deciding factor in attainment or non-attainment of water quality standards. Example: If there are three monitoring stations within an AU and DWR determines that collectively these three stations are attaining water quality standards but individually if one of these locations is not attaining standards then the DWR can subdivide the AU in order to declare this individual sub-segment as an impaired AU. The 2018 Draft Integrated Report for Assessment Unit 27-(96)b1 provides a good example of this dilemma:

Assessment Unit 27-(96)b1 appeared to be previously represented by two station locations- J8290000, and J8570000. Assessment Unit 27-(96)b1 for the 2018 Draft was apparently subdivided into three different Assessment Units as follows:

	<u>AU 27-(96)b1a</u>	<u>AU 27-(96)b1b</u>	<u>AU 27-(96)b1c</u>
Chlorophyll-a	Category 1	Category 3t ND*	Category 1
Copper (3ug/L)	Category 5 ND*	Category 5 ND*	Category 5 ND*
Dissolved Oxygen	Category 3a	Category ? ND*	Category 1
Monitoring Stations	J8290000	None	J8570000 J8570000

*No Data

Based on a close examination of the Assessment Unit Fact Sheets kindly provided by DWR, it appears that no stations are representative of AU27-(96)b1b since no Physical Chemical Data Summaries 2012-2016 are included. Also note that none of the three divided AU's has any data for Copper. The segmenting of AU 27-(96)b1 into three AU's is highly confusing and without explanation. Assessment Units should be considered management units and not constantly changed based on changes in water quality data. Assessment Units should remain as stable as possible. Monitoring locations are established and remain relatively stable. Assessment Units

are evaluated for management purposes and should not be changed based on the flux of highly variable water quality parameters. Observed concentration data should be used for Category assignments not constant changes in Assessment Units.

DWR rules are very clear, Designated Uses and Standards determine the assignment of appropriate Stream Classifications. However, for water quality impairment decisions, DWR has continued to alter 303(d) Assessment Units based on the observed data for each assessment period. Altering Assessment Units based on the changing concentrations of observed data is particularly important in Reservoirs and Estuaries. Concentration data is normally variable even in pristine waterbodies. When DWR observes differences in standards attainment at particular stations within an AU, the AU is subdivided where one may be meeting standards and one not meeting standards. Once an AU has been subdivided based on a particular assessment period, the subdivision is not re-combined. This can help to maximize 303(d) listings. Simply put, if DWR continues to promote 303(d) decisions based on single monitoring stations the number of 303(d) impairments will increase. The end result is that the central tendency of a classified water body segment is not used to evaluate impairment. Impairment decisions are made based on limited sampling sites and limited data rather than an assessment of the entire classified portion of the water body. The EMC has not evaluated or approved the current DWR approach to establishing or splitting AU's.

3. The new 303(d) listing methodology no longer requires 90% statistical confidence for listing impaired waters. Waters may be impaired without 90% confidence if infractions of a numeric water quality standard are exceeded in just three or four observations in the last two years of the assessment period. This change in the assessment methodology does not provide a sufficient level of confidence to render the Assessment Unit impaired and subject to TMDL or strenuous management scenarios.

4. Small data sets are problematic for 303(d) listings. Without a sufficient number of samples to characterize an Assessment Unit over time and space the probability of an erroneous assessment for impairment greatly increases. Based on the proposed methodology, it appears that only three observations collected in a short time period (perhaps a single year) that exceed a numeric criteria could place a segment on the impaired waters list without any additional samples being collected within the last five years. Incorporating older data (more than five years old) to meet a ten sample minimum does not help the representative evaluation of current water quality conditions. The public is entitled to a confident scientific and representative evaluation. The concern is the promotion of selective sampling approaches in order to achieve a 303(d) listing rather than the use of representative samples over time and space.

5. Throughout our review of the detailed Integrated Report Fact Sheets impairments for the parameters Nitrogen and Phosphorus were frequently observed. With the exception of water supply waters (N=10mg/L), NC has no numerical water quality criteria (standards) for nitrogen or phosphorus. Any reference to exceeding criteria for either nitrogen or phosphorus should be removed.

6. A detailed review of the Draft 2018 Integrated Report Fact Sheets provided by DWR has identified a number of observations that suggest additional DWR staff review is necessary. These technical evaluations are summarized below:

Review DWR Draft 2018 IR as of December 2018

27-(96)b1a

From Bachelor Creek to a line across the river from Renny Creek to 0.5 miles north of Mills Br. Appears to be a new 3 way AU Split from previous Segment 27-(96)b1. No explanations for this split in AU's is provided.

Issue Notes:

- Conflict in Dissolved Oxygen listing Category 3 or Category 5 ?
- Fact Sheet @ top Data Inconclusive > 10% and >90 conf Dissolved Oxygen (5 mg/l, AL, SW) 3a
- Fact Sheet Indicates Changes from 2016 assessment - New Category 5 For Dissolved Oxygen (5 mg/l)

27-(96)b1b NEUSE RIVER Estuary

From a line across the river from Renny Creek to 0.5 miles north of Mills Branch to a line across the river from Jack Smith Creek to 0.5 miles south of Mills Branch. Appears to be a new 3 way AU Split from previous Segment 27-(96)b1. No explanations for this split in AU's is provided.

Issue Notes:

- 2018 Draft Water Quality Assessment Chlorophyll has no assessment listed.
- However, 2018 Draft Category Changes from 2016 Assessment New IR category for chlorophyll 3t but says parameter is meeting criteria.
- No Physical Chemical Data Summaries for stations 2012-2016

27-(96)b1c NEUSE RIVER Estuary

From a line across the river from Jack Smith Creek to 0.5 miles south of Mills Branch to Trent River. Appears to be a new 3-way AU Split from previous Segment 27-(96)b1 Reason unclear. No explanations for this split in AU's is provided.

Issue Notes:

- Fact Sheets should be checked closely as station locations are duplicated and a count of 105 suggests an unrealistic monitoring frequency. Previous station locations from NCSU CAEE and UNC IMS are not apparent – JA112, RR1, UNC IMS 30, J8290000, J8570000
- Physical Chemical Data Summaries for stations 2012-2016 are listed as follows:

<u>Station #</u>	<u>Location</u>	<u>Count</u>	<u>#obs>40</u>	<u>%obs>40</u>	<u>%Confid</u>
J8570000	Neuse R 0.5 mi ups Union Point NB	53	3	9.4%	8.9%
J8570000	Neuse R 0.5 mi ups Union Point NB	105	5	4.7%	1.6%

Dissolved Oxygen (5 mg/L) as follows

<u>Station #</u>	<u>Location</u>	<u>Count</u>	<u>#obs<5</u>	<u>%obs <5</u>	<u>%Confid</u>
J8570000	Neuse R 0.5 mi ups Union Point NB	53	5	9.4%	38%

27-(96)b2 NEUSE RIVER Estuary

From Trent River to a line across Neuse River from Johnson Point to McCotter Point (part of upper model segment) Draft 2018 Status Exceeding Criteria Chlorophyll a (40 µg/l, AL, NC) 4i

Issue Notes:

- Fact Sheets should be checked closely as station location is duplicated and a count of 104 suggests an unrealistic monitoring frequency for DWR station. Suspect Station might be UNC IMS Station 50 perhaps 105 observations. Site called Neuse R CM 15 nr Riverdale.
- No data for NCSU CAEE JA 115 or JA116

27-(104)a1 Neuse River Estuary

From a line across Neuse River from Johnson Point to McCotter Point to a line across the river from 0.6 miles north of Otter Creek and 0.7 miles south of Goose Creek

Appears to be a new AU Split from previous Segment 27-(104)a Reason unclear

No explanations for this split in AU's is provided.

Issue Notes:

- Fact Sheets indicate exceeding criteria for Phosphorus and Nitrogen – no WQS criteria
- Fact Sheets from previously combined Segment 27-(104)a included JA110, JA102, JA103, JA105 JA108, UNC 70, J8902500, J8910000. It is unclear how these locations have been distributed or deleted.
- Fact Sheets should be checked closely as station location is not correct- a count of 105 suggests an unrealistic monitoring frequency for DWR station. Suspect Station might be UNC IMS Station 70 perhaps 105 observations.

<u>Station #</u>	<u>Location</u>	<u>Count</u>	<u>#obs>40</u>	<u>%obs>40</u>	<u>%Confid</u>
J8902500	Neuse River at CM 2 at Mouth of Broad Cr	50	17	34%	99%
J8903600	This Station is unknown	105	24	23%	99%

27-(104)a2 NEUSE RIVER Estuary

From a line across the river from 0.6 miles north of Otter Creek and 0.7 miles south of Goose Creek to 0.5 miles upstream of Beard Creek. Appears to be a new AU Split from previous Segment 27-(104)a. No explanations for this split in AU's is provided.

Issue Notes:

- Fact Sheets indicate exceeding criteria for Phosphorus and Nitrogen – no WQS criteria
- Fact Sheets from previously combined Segment 27-(104)a included JA110, JA102, JA103, JA105 JA108, UNC 70, J8902500, J8910000. It is unclear how these locations have been distributed or deleted.
- Fact Sheets from previously combined Segment 27-(104)a included JA110, JA102, JA103, JA105 JA108, UNC 70, J8902500, J8910000. It is unclear how these locations have been distributed or deleted.

<u>Station #</u>	<u>Location</u>	<u>Count</u>	<u>#obs>40</u>	<u>%obs>40</u>	<u>%Confid</u>
J8910000	NEUSE RIV AT CM 11 NR RIVERDALE	48	13	27%	99%
J8920000	This Station is unknown	1		0%	0%

27-(104)b NEUSE RIVER Estuary

From a line across Neuse River from 1.2 miles upstream of Slocum Creek to 0.5 miles upstream of Beard Creek to a line across Neuse River from Wilkinson Point to Cherry Point (bend model segment)

Issue Notes:

- Fact Sheets indicate exceeding criteria for Phosphorus and Nitrogen – no WQS criteria
- Fact Sheets do not offer any information on either:
 - 2018 DRAFT Integrated Reporting Category Changes from 2016 Water Quality Assessment or
 - Physical Chemical Data Summaries 2012-2016 by station
- Consider previous NCSU CAAE JA140, JA100,JA111,JA101,JA107

27-(118)a1 NEUSE RIVER Estuary

From a line across Neuse River from Wilkinson Point to Cherry Point to a line across the river
From Adams Creek to Wiggins Point (part of lower model segment)

Issue Notes:

- 2018 No Assessment for Chlorophyll
- Fact Sheets do not offer any information on either:
 - 2018 DRAFT Integrated Reporting Category Changes from 2016 Water Quality Assessment or
 - Physical Chemical Data Summaries 2012-2016 by station
- Consider previous NCSU CAAE JA140, JA100,JA111,JA101,JA107
- Previous Assessments may have included J9530000, UNC IMS 120

27-(118)a2 NEUSE RIVER Estuary

From a line across Neuse RiverFrom Adams Creek to Wiggins Point to Pamlico Sound (mouth of
Neuse River described as a line running from Mawpoint to Point of Marsh)

Issue Notes:

- Fact Sheets indicate exceeding criteria for Phosphorus and Nitrogen – no WQS criteria
- Fact Sheets for 2018 Water Quality Assessment for chlorophyll have two conflicting:
 - Exceeding Criteria Chlorophyll a (40 µg/l, AL, NC) 4i
 - Meeting Criteria Chlorophyll a (40 µg/l, AL, NC) 1
- 2018 DRAFT Integrated Reporting Category Changes from 2016 Water Quality Assessment or
 - Physical Chemical Data Summaries 2012-2016 by station
- Physical Chemical Data Summaries 2012-2016 by station do not include UNC IMS 160
- Fact Sheets should be checked closely as station location is duplicated and a count of 105 suggests an unrealistic monitoring frequency for DWR station. Suspect Station might be UNC IMS Station 160 perhaps 105 observations. Site called Neuse River at mouth near Pamlico.

Station #	Location	Count	#obs>40	%obs>40	%Confid
J9810000	Neuse R at CM 7 nr Oriental	47	5	10.6%	48.7%
J9810000	Neuse R at CM 7 nr Oriental	105	13	12.3%	75%
J9930000	Neuse R at CM NR at mouth nr Pamlico	18	0	0%	0%

Neuse River Compliance Association®

P.O. Box 1410
Clayton, N.C. 27528 - 1410

January 7, 2019

Mr. J. D. Solomon, Chair,
and Members of the EMC Commission
N. C. Environmental Management Commission
NCDEQ – Division of Water Resources
1617 Mail Service Center
Raleigh, N.C. 27699 - 1617

Subject: EMC Agenda and Action Item for January 10, 2019, "DWR Request Approval to Proceed to Public Notice and Hearing with the Fiscal Note and Proposed Rule Re-Adoption and Amendments to Nutrient Strategy".

Dear Chairman Solomon:

On behalf of the Neuse River Compliance Association (NRCA) we are submitting the attached comments on the above subject matter. The NRCA received its NPDES permit in 2003 and is the oldest "bubble" NPDES permit in the State for collective compliance with nutrient limits. The Association represents 23 water waste treatment facilities (see attachment), including the municipal plants east of Falls Dam, one Facility that discharges into Falls Lake, and several privately owned facilities.

The NRCA appreciates the attention that the EMC has given to its concerns and also appreciates the time demand on the EMC to readopt these rules in accordance with the schedule set forth by the Rules Review Commission. The NRCA concerns expressed regarding the Fiscal Note and the adequacy of the discussion of impacts on local governments can be addressed, as the Hearing Officer deems appropriate, during the public hearing process.

The NRCA respectfully requests that the EMC approval of proposed rules for notice and comment include a ratio for the use of nutrient credits that is consistent with the minimum as set forth by the US EPA in its guidance, i.e. greater than 1.0 to 1, and that the EMC direct the DWR staff to work with the local governments in the Neuse Basin to provide a more comprehensive and specific examination of the impacts on local governments which have near term needs to expand existing facilities or to add new facilities.

The NRCA requests that the Fiscal Note be expanded to include the information available from the long term waste water plans of the Neuse Basin local governments, the forecast growth in population, and that the available nutrient allocation for potential long term lease or sale be examined in light of the current market conditions for the reallocation of the existing nutrient allocation as well as the amount of allocation tied to and included within existing NPDES permits.

Mr. J. D. Solomon, Chair
Page 2.
September 11, 2017

Thank you for your time and consideration in this very important matter.

Sincerely,

Dan (F. M. S. L. h. by J. P. H. E. y

Dan McLawhorn, Chair
Neuse River Compliance Association

CC: NRCA Board

Neuse River Compliance Association Membership

Town of Apex, N.C.

Town of Benson, N.C.

Town of Cary, N.C.

Town of Clayton, N.C.

Contentnea Metropolitan Sewer District, Grifton, N.C.

Town of Farmville, N.C.

Dupont-Kinston, Kinston, N.C.

City of Goldsboro, N.C.

Town of Havelock, N.C.

Johnston County, N.C.

Craven County, N.C.

Town of LaGrange, N.C.

City of New Bern, N.C.

Duke Energy - Progress

City of Raleigh, N.C.

City of Wilson, N.C.

City of Kinston, N.C.

Aqua, North Carolina

South Granville Water and Sewer Authority, Butner, N.C.

Marine Corp Air Station - Cherry Point, Havelock, N.C.

Utilities, Inc., Charlotte, N.C.

CWS Systems, Charlotte, N.C.

Neuse River Compliance Association®

P.O. Box 1410
Clayton, N.C. 27528 - 1410

TO: Environmental Management Commissioners

FROM: Daniel F. McLawhorn, Chair *DFM*
Haywood M. Phthisic, Executive Director *HPhthisic*

DATE: January 7, 2019

RE: Fiscal Note and DWR Recommended Changes to Neuse Estuary Rules

The Neuse River Compliance Association (NRCA) offers comments in response to the Fiscal Note prepared by DWR that it saw for the first time on Monday, December 31, 2018.

1. Significant errors in calculation of the cost of the current rule to local governments for expansion or new WWTP construction cause the Fiscal Note to misrepresent the impact of the current rule. DWR estimated a cost of \$34M for nutrient credits to operate a 10 MGD WWTP for 70 years. NRCA estimates that cost at over \$400M.
2. DWR misrepresents that nutrient allocation dedicated by permit to existing plants, but not currently in use, is available to use for expansion or new WWTP construction. Raleigh, Johnston County, and Clayton have NO available nutrient allocation for future growth TODAY.
3. DWR representation that there is nutrient allocation currently available for lease or sale to support the construction of expansion or new WWTPs is incorrect. None is available.
4. DWR asserts that its nonpoint source valuation system will assure appropriate compensatory reduction for in lieu new development projects, but the same valuation system grossly underestimates the value for point source offset reduction. This places a disproportionate load on point sources in violation of N.C. Gen. Stat. §143-215.8B(b)(1):

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

FAILURE TO ESTIMATE COST TO LOCAL GOVERNMENTS OF FOR ADDING CAPACITY FOR WWTPs.

The NRCA finds it incredible that DWR can estimate the cost of the rule changes for stormwater for the next 10 years, yet it finds it impossible to calculate and show in its Fiscal Note the cost to local governments for the changes in the Waste Water treatment rule. See p 35, 4.2.3 of the Fiscal Note. The failure to include the information is in direct violation of N.C. Gen. Stat. §150B-21.4(b) Local Funds. “The fiscal note **must state the amount by which the proposed rule change would increase or decrease expenditures** or revenues of a unit of local government and **must explain how the amount was computed.**”

DWR ignored information readily available within the Division which could be used to estimate the capacity needs of local governments in the Neuse basin. Pursuant to N.C. Gen. Stat. §143-355(l) Local Water Supply Plans, local governments have provided DWR with all the information needed to project needs in the basin. DWR apparently ignored this information so that it could find it impossible to project needs and demands.

CURRENTLY UNUSED ALLOCATION IS NOT AVAILABLE FOR ADDITIONAL WWTP CAPACITY

Similarly, the Fiscal Note misstates the permitting process for Neuse Basin WWTPs when they failed to apply the plain language of 15A NCAC 2B .0234, the rule that is proposed to be amended. To support its illusory conclusion that 41% of the nutrient allocations to WWTPs in the Neuse Basin are available for future expansions or new facilities, the Fiscal Note ignores that the current rule causes the full allocation to support a NPDES permit for a WWTP to be dedicated at the time of the permit application. Thus, for example, the City of Raleigh has **NO NUTRIENT ALLOCATION TO USE FOR EXPANSION OR A NEW 10 MGD FACILITY**. That incorrect assumption was used in the Fiscal Note at 4.2.5.1. and 4.2.4.4. [“With half or more of the waste load allocation unused in the Neuse basin each year, there appears to be considerable room to accommodate new or expanding facilities in the foreseeable future.”] At 4.2.5.1, the Fiscal Note assumed that because Raleigh used 61% of its permitted flow for its largest plant IN 2017, the remaining 39% of the nutrient allocation is available to build another plant. Instead, Raleigh used all of its remaining nutrient allocation to meet the requirements of 15A NCAC 2B .0234 (8)(c) when its permit to expand the plant from 60 MGD to 75 MGD was approved.

The examination of Clayton as the mid-sized facility engages exactly the same false assumptions

DWR made no effort to ascertain the amount of nutrient allocation that could be sold or leased for long term needs in the Neuse basin. See p 35, at 4.2.3. Instead, it engaged the wrong assumption that every pound of nitrogen allocation not in actual use in 2017 is available for sale or long term lease. See p 38, at 4.2.4.4 [“On the other hand, nutrient loading still has not seen a substantial uptick since total nitrogen limits became effective in 2003 due to increasing wastewater treatment efficiencies. With half or more of the waste load allocation unused in the Neuse basin each year, there appears to be considerable room to accommodate new or expanding facilities in the foreseeable future.”]

DWR emphasizes that local governments can used leased nutrient allocation from another Neuse source of point source allocation and avoid the nutrient credit costs. Because the lease will be for a long duration (10-30 years), no holder of excess allocation will lease it. Instead, it will reserve the allocation for its own needs.

Thus, the Fiscal Note is fatally flawed in its fallacious assumptions that expanding or new WWTPs can rely on allocation not presently in active use to get a new or expanded facility permitted. That situation will not change with the rule changes sought by the NRCA.

FISCAL NOTE ERRS IN CALCULATION OF COST FOR NUTRIENT CREDITS UNDER THE CURRENT RULE

Equally disturbing is the cost of Offset Credits as set forth in Table 4-5 for a large plant expansion. The NRCA has shared with the preparers of the Fiscal Note its calculation as to the cost of complying with the current version of the rule for a new 10 MGD. That cost is \$136M for each 30 year

period of time. [By email, the staff who prepared the Fiscal Note agreed the NRCA calculation was correct.] The cost for 70 years, as the Table represents, will be over \$400M. For reasons that are unknown, DWR showed in the Fiscal Note that the cost is \$34M. This gross understatement of the current rule's impacts is also called into question by the calculation of the cost to Clayton of sufficient nutrient credits to support a 2 MGD expansion. That estimated cost was \$13M as compared to \$34M for Raleigh. The Raleigh example is for 10 MGD or five times larger than the Clayton expansion. But the Raleigh cost would be \$65M based on the Clayton cost.

NUTRIENT CREDIT VALUE FOR SCMs TO OFFSET NEW DEVELOPMENT UNEQUAL FOR SAME SCMs TO OFFSET POINT SOURCES

In 3.1.3 of the Fiscal Note, DWR discussed the improvements in the proposed SNAP accounting tool for capturing the actual amount of reduction from SCMs. DWR represents that the revised SNAP accounting tool will result in "a reduced need for nitrogen offsets under the proposed rule relative to current requirements, particularly at high development density. This effect is limited to Current Neuse and Tar programs since new programs no have no nutrient requirements."

In the part of the Fiscal Note concerned with offset nutrient credits to be used by WWTPs, DWR attempts to justify a ratio higher than the 1 to 1 ratio applicable to new development. PP 59-60, 5.3.2. DWR contends that the trading ratio must be "utilized to account for the relative and unavoidable uncertainty of nonpoint nutrient reduction practices in comparison to increased nutrient loading from point sources." Thus, the Fiscal Note finds that no ratio is required for an appropriate level of nutrient offsets for new development, but a significant ratio, or tax, is required when point sources rely on exactly the same nutrient reducing SCMs. This is in clear violation of N.C. Gen. Stat. §143-215.8B and thus exceeds the authority of the Environmental Management Commission.

The Fiscal Note acknowledged that EPA Guidance sets forth means to address the uncertainties in its Water Quality Trading Policy. First on the list of such solutions in "monitoring to verify load reductions." This option is included in the proposed rule, but DWR did not offer any evaluation of it as a means to deal with the cited uncertainties. The Fiscal Note also failed to acknowledge that the NPDES permit for point sources will establish the total load of nutrient loading from the WWTP. The permit holder is responsible for showing that load is not exceeded or it is subject to civil penalty and third party suit under the Clean Water Act. Both are strong and ample tools to address the perceived uncertainty, yet this important constraint against exceeding the allowed load is ignored by the Fiscal Note.

Finally, the Fiscal Note failed to acknowledge that the State agencies set the values for nutrient credits to be awarded to every nutrient reduction project. Through that authority, DWR has ample authority to assure that the nutrient credits used by point sources will meet the needs of their NPDES permit.

CC: Assistant Secretary Shelia Holman
DWR Director Linda Culpepper