NSW Proposed Rule Revisions & Options  
New Development & Existing Development

This draft document provides potential revised rule language for addressing specific comments about New Development and Existing Development Stormwater Rules during the rules re-adoption process. The following rule topics are addressed:

* New Development Land Disturbance Thresholds & Peak Rate Match
* Existing Development Creditable Measures in Local Programs & Accounting Methods
* Existing Development Annual Reporting Requirements

*I. Potential New Development Stormwater Rule Revisions & Options*

* **Land Disturbance Thresholds & Peak Rate Match**The suggestion has been made to either increase the Falls land disturbance threshold to 1 acre (similar to Neuse, Tar-Pam and Jordan) or include a provision in the rule new development rule allowing large acreage low density single lot low density projects to be considered compliant with the nutrient targets. This would prevent unnecessary expense of requiring the development of a stormwater management plan for these projects. Eliminating the requirement of a stormwater plan in for these large acreage low density residential projects would also eliminate the requirement for meeting peak rate match requirements on sites where BMPs are otherwise not necessary.
* **Land Disturbance Rule Options**   
  + *Option #1 (Recommended): Add provision to all the NSW Dew Development Stormwater rules (Neuse, Tar-Pam, Falls, Jordan) that a single family residential project on a lot of record of 3 acres or more in size meeting specific impact minimization criteria is considered in compliance with the nutrient targets and no stormwater management plan is needed.*
  + Option #2 (Not recommended): *Raise Falls New D. land disturbance threshold for residential* Raise the land disturbance threshold from ½ acre to 1 acre to be consistent with Neuse, Tar-Pam, and Jordan New Development rules.
* **Draft Proposed Land Disturbance Rule language**

The following rule language (underlined) is proposed to be inserted in the “Requirements” section of Falls and Jordan New Development Rule as Sub-Item (3)(b) immediately after the land disturbance language in the current rule Sub-Item(3)(a).

(3)(b) A stormwater management plan is not required for a single family residential project that demonstrates it meets the following criteria:

(i) Development is located on a single lot of record at least 3 acres in size;

(ii) Site design minimizes concentrated stormwater runoff and maximizes sheet flow through vegetated areas; and

(iii) Impervious area is minimized and located away from surface waters and drainage ways to the maximum extent practicable.

Land Disturbance Example Calculations Using JFSAT V. 3.1

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Lot Size (Acres)** | **Roof Area (sq/ft)** | **Driveway Area (sq/ft)** | **Patio Area**  **(sq/ft)** | **Lawn Area (sq/ft)** | **TN (lbs/ac/yr)** | **TP (lbs/ac/yr)** | **% Impervious** |
| 2 | 1,000 | 500 | 200 | 85,420 | **1.57** | 0.44 | 2.0 |
| 2 | 1,500 | 1,000 | 200 | 84,420 | **1.70** | 0.46 | 3.1 |
| 2 | 1,500 | 2,000 | 200 | 83,420 | **1.84** | 0.50 | 4.2 |
| 2 | 2,000 | 2,000 | 200 | 82,920 | **1.90** | 0.51 | 4.8 |
| 2 | 2,000 | 2,000 | 500 | 82,620 | **1.94** | 0.55 | 5.2 |
| 2 | 2,000 | 2,000 | 750 | 82,370 | **1.97** | 0.55 | 5.5 |
| 2 | 3,000 | 2,000 | 750 | 81,370 | **2.08** | 0.59 | 6.6 |
|  |  |  |  |  |  |  |  |
| 3 | 1,000 | 500 | 200 | 128,980 | **1.50** | 0.44 | 1.3 |
| 3 | 1,500 | 500 | 200 | 128,480 | **1.54** | 0.42 | 1.7 |
| 3 | 1,500 | 3,000 | 200 | 125,980 | **1.77** | 0.48 | 3.6 |
| 3 | 2,000 | 1,000 | 500 | 127,180 | **1.65** | 0.46 | 2.7 |
| 3 | 3,000 | 2,000 | 500 | 125,180 | **1.82** | 0.50 | 4.2 |
| 3 | 4,000 | 3,000 | 750 | 122,930 | **2.01** | 0.55 | 5.9 |

*2. Potential Existing Development Rule Revisions*

The following proposed rule revisions provide specificity to the rule concerning local program requirements such as identifying existing creditable practices and the approval process & criteria for new and/or modified practices. The proposed revisions below will be incorporated in the Falls Lake Existing Development Rule starting at Sub-Item (4)(i) “Elements of Load Reduction Programs”. They will also be incorporated as revisions to the Jordan Existing Development Rule starting at Sub-Item (9) “Stage 2 Program Development”. Rule language in the current Falls Lake ED Rule requiring programs address land types affected (Sub-Item(4)(k)), and requiring programs to address use of detailed list of practices (Sub-Item(4)(l) through (4)(n)), is proposed for deletion.

* **Draft Proposed Rule Revisions Clarifying Elements of Load Reduction Programs**

(4)(i) The program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the local government intends to implement, ~~and types of existing development affected,~~ a prioritization of practices, magnitude of reductions it expects to achieve from each, and the costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions;

(j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps take or planned to secure such funding;

* **Draft Proposed Rule Revisions For Addressing Existing Creditable Practices in Local Program  
  This new proposed language is proposed to be inserted**

(5) APPROVED PRACTICES. A local government may propose to implement any nutrient reducing practice provided in the model program approved by the Environmental Management Commission in November 2016 or other practice subsequently approved by the Director according to the process described in Items (6) though (8) of this Rule.

* **Draft Proposed Rule Language For New or Modified Practices**The language below addresses the approval process & criteria for new and/or modified practices and is proposed to be inserted in the Falls and Jordan Rules immediately following the Elements of Load Reduction Programs language provided above.

(6) NEW PRACTICE APPROVAL PROCESS. The following is the process whereby a regulated party may submit a new or modified type of practice for approval by the Division for nutrient reduction credit. Documentation for a candidate practices may be developed by the Division or provided by others. The credit approval process shall include the following steps in the order they are described.

(a) Regulated party develops or submits a practice credit proposal that addresses the elements described in Item (7);

(b) The Division provides the draft credit specifications to the Nutrient Scientific Advisor Board for review followed by a 30 day informal comment period; and

(e) Approval of final credit specifications by signature of the Director and posted to the Division’s website.

(7) PRACTICE ELEMENTS. The following elements shall be addressed in any practice credit proposal developed or submitted for approval:

(a) Practice description with characterization of load reduction value ranges and the nutrient reduction estimation method tied to practice design conditions;

(b) Installation, implementation, operation and maintenance minimums and considerations to ensure intended level and duration of function;

(c) Process for verifying and reporting continued function of practice; and

(d) Supporting scientific information and references;

(8) NUTRIENT CREDIT FOR INDIVIDUAL PRACTICES. Where a practice type’s nutrient performance is insufficiently documented to meet all the requirements of Item (7) a regulated party may seek credit for load reductions from an individual installation of that practice by monitoring the installations performance until a presumptive lifetime credit value for the practice can be established. The credit award would be annual and retroactive, based on the Division’s acceptance of monitoring results for the preceding year until such time it is determined further monitoring is no longer needed to establish and verify the lifetime credit value. The proposal for an individual practices shall meet the following criteria:

(a) A monitoring plan and quality assurance plan approved by the Division prior to initiating the project; and

(b) A minimum of five years of monitoring to support establishment of lifetime credit values, unless information can be provided to the Division demonstrating that a shorter monitoring time span is sufficient.

* **Proposed Rule Language Addressing Load Accounting Tools (Stormwater)**

The language below addresses the load accounting methodology to be used for estimating stormwater runoff loads from post-baseline development. It is proposed to be inserted in the Falls and Jordan Rules following the language provided in Item (8) above.

(9) To estimate stormwater runoff loads due to post-baseline development local governments shall use the Jordan / Falls Stormwater Nutrient Load Accounting Tool, or any subsequent revisions to it, or an equivalent alternative or more accurate accounting method reviewed and approved by the Division.

***Annual Reporting (Falls & Jordan)***

* **Proposed Rule Language Addressing Elements to address in Annual Reports**

The language below addresses the required elements of a local government’s annual report documenting implementation of the rule requirements. It is proposed to be inserted in the Falls “Rule Implementation Section” replacing Sub-Item (7)(e) and in the Jordan Rule replacing the current annual reporting language in Item (12).

(10) Annual Reports. Upon Implementation of the programs required under Item (x) of this Rule, local governments shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. The following items shall be addressed in a local government’s annual report:

1. Summary of existing development load reducing activities implemented and terminated including:
   1. Types and number of new activities implemented and any terminated for that reporting cycle;
   2. Basic characterization and quantification of each practice;
   3. Estimated annual reductions or increases from each activity (lb/yr);
   4. Duration of anticipated loading reductions for new activities (yrs);
   5. Type and number of measures due and proposed for credit renewal, and annual reductions affected (lb/yr);
   6. Costs/efficiencies of each activity to maximum extent practicable; and
   7. Total annual expenditures including local government funds and state & federal grants.
2. Accounting / Tracking Progress
   1. Reductions achieved by new measures, load increases from terminated measures, and resulting net change in loading from actions taken in that reporting cycle (lb/yr)
   2. Adjustments to allocations & load reduction needs via annexation
   3. Summary of load reduction progress and comparison to that proposed in approved program (lb/yr)
3. Summary of Inspection and maintenance activities; and
4. Summary of anticipated activities for the next reporting period.