

Falls Lake Rules Readoption Update – March 2026

The Falls Lake Nutrient Management Strategy (Falls Lake Rules) is an existing set of rules that define nutrient management requirements within the Falls Lake Watershed. These rules are currently going through a readoption process. The rules that impact Hillsborough include the following:

- Purpose and Scope
- New Development Stormwater Management
- Existing Managed Lands
- Wastewater Discharge

The NC Department of Environmental Quality, Division of Water Resources (DWR) staff distributed drafts of the Purpose and Scope, New Development and Existing Managed Lands rules in early February. A draft of the wastewater discharge rule has not yet been circulated.

These draft rules have been reviewed by town staff and discussed at the Upper Neuse River Basin Association's (UNRBA) March Path Forward Committee (PFC) meeting. Several issues with the draft rules were raised at the PFC meeting. This update includes background information about the rule readoption process and summarizes issues with the current DWR draft rules.

Background

Pursuant to NC Session Law 2018-5, the Falls Lake Rules Readoption process was triggered by the submittal of the NC Collaboratory report on Falls Lake. That report was submitted to NC Department of Environmental Quality, Division of Water Resources (DWR) and the Environmental Management Commission (EMC) in December of 2023.

In preparation of the Falls Lake Rules Readoption process, the UNRBA submitted its Concepts and Principles for the Reexamination and the Consensus Principles II documents to DWR and the EMC in November 2023. The UNRBA also submitted their final watershed model report in December 2023 and final lake model report in December 2024. DWR has responded that the reports have been accepted and the models approved under the reexamination provision of the Falls Lake Rules. Relative to rule readoption work, the UNRBA initiated an informal stakeholder process in December 2024 with four workgroups that developed a working draft set of rules.



However, at the May 2025 meeting of the EMC, the UNRBA learned that DWR had begun preparation of a set of draft Falls Lake Rules. No notice was provided to the UNRBA that this effort was underway, nor was there any information provided to the UNRBA on how DWR planned to use the information developed during the extensive workgroup process to provide preliminary draft rules.

The UNRBA subsequently updated their versions of the draft rules but the state's Environmental Management Commission (EMC) requested that the UNRBA and DWR work through differences to develop one set of draft rules to present to the EMC. This process has been ongoing and has included numerous meetings between the UNRBA and DWR. Despite this collaboration, there are significant issues with the current DWR draft rules.

DWR's Draft Rule Issues

The following highlights the more significant issues with the current (February 2026) draft rules proposed by DWR.

Purpose and Scope

- The current DWR draft still includes language regarding the 40% and 77% reductions in nitrogen and phosphorous that are in the current rule. While DWR considers this an “aspirational” goal, listing these numbers in the rule are problematic.
 - These reduction goals are inconsistent with the UNRBA's monitoring data and modeling efforts.
 - Falls Lake is considered a “4b water” and the Falls Lake Rules are a TMDL alternative; reduction goals or specific limits seem contrary to a 4b.
 - Even if these reductions are “aspirational goals” regulated local governments could be subject to legal action by environmental groups if the reductions are not met.
- While DWR's draft version includes a provision to develop a site specific chlorophyll-a standard for Falls Lake, they are proposing to utilize the stat's Nutrient Criteria Development Plan (NCDP) Scientific Advisory Council (SAC). Which was to develop site specific chlorophyll-a standards for High Rock Lake, Albermarle Sound and the Middle Cape Fear River. So for a standard has only been developed for High Rock Lake and that process took about 5 years. The concern here is how long this process may take and that the UNRBA (i.e. Falls Lake Watershed Association) is not specifically included in this process.



- Current draft rule does not commit DEQ to conduct monitoring of the main tributaries within the watershed. DEQ's reasoning is lack of resources and staff. Monitoring is necessary to document progress and if DEQ does not have the resources then the regulated governments would have to bear the cost.

New Development Stormwater Management

- Generally, there is agreement with DEQ draft version. However, there may be some requirements that could be inconsistent with the town's MS4 stormwater permit. We have asked DEQ to work with their MS4 permitting staff to ensure there are no issues.
- There is also some concern regarding annual reporting requirements and timing of submittals to DEQ, but we believe these will be worked out as the process moves forward.
- DEQ is also proposing a new tool used to calculate nutrient loads from new development. While we believe this tool will have an improved efficiency it will need to be vetted and tested.

Existing Managed Lands

- Generally the structure of DEQ's draft existing managed lands rule is acceptable. It allows regulated governments the option of an individual program (nutrients "pounds" accounting) or an investment based approach similar to the current IAIA program.
- The DEQ version currently excludes counting money spent on the operation and maintenance of practices or projects completed under the investment based approach. Meaning, any money spent on maintaining something like a bioswale would not count towards investment compliance. This is not acceptable. Hopefully this will be resolved.
- There are other minor details that will need to be resolved on this rule but the UNRBA and town staff believe compromises can be worked out for this rule.



Wastewater Discharge

- No draft has been provided but DEQ staff indicated that they are still planning to draft language that allocates nutrients back to the 2006 baseline period. While that may help some, it does not alleviate the potential future issues in compliance with load allocations.
- Much like the Purpose and Scope rule, the UNRBA and town staff do not believe nutrient load allocations belong in the rule since this is not a TMDL but rather a 4b alternative plan. (See below for more discussion on TMDL vs. 4b plans)

Summary

There are still significant issues in DEQ's draft rules and staff does not believe DEQ will be ready to bring draft rules to the EMC in July 2026, which in turn puts into question whether the rules can be readopted in 2027. If DEQ is unwilling to compromise, the UNRBA will consider alternative actions.

In fact, the UNRBA legal team has been discussing options and while these options have not yet been discussed in detail with the UNRBA membership, it is on the agenda for the March UNRBA board of directors meeting. Given the potential cost of complying with these rules, it is important that town staff remain engaged in this process. Updates will be provided as new information becomes available.



Key Differences Between TMDLs and 4b Plans

DEQ assesses water bodies across the state to determine whether water quality standards are impaired or not. Under Section 303(d) of the Clean Water Act, if a water is impaired then a Total Maximum Daily Load (TMDL) is required. A TMDL defines the specific loading capacity for a pollutant. A TMDL is typically used when necessary to establish mandatory, calculated load reductions, particularly when sources are complex or unregulated.

However, the Clean Water Act allows for an alternative approach called a 4b Watershed Improvement Plan or 4b plan. A 4b plan is a demonstration that existing, non-TMDL pollution controls will result in attainment of water quality standards in a reasonable period of time. A 4b Plan is used when a state can demonstrate that existing regulations, permits, or voluntary actions are sufficient to fix the issue, eliminating the need for a new, detailed calculation. With this in mind, here are some discussion points for Falls Lake:

- Falls Lake is listed as a Category 4b water and is NOT on the 303(d) list of impaired waters requiring a TMDL pursuant to the Clean Water Act.
- It is a Category 4b because there is an existing plan which is the current Falls Lake Nutrient Management Strategy (Falls Lake Rules)
- If the Falls Lake Rules are indeed a Category 4b watershed plan, then pursuant to the CWA there cannot be a TMDL.
- If there is no TMDL, there cannot be a defined loading capacity and therefore there cannot be any poundage allocations defined in the existing Falls Lake Nutrient Management Strategy

The legality of whether or not an allocation can be included in the Falls Lake Rules is a possible pathway for the UNRBA to explore.