15A NCAC 02H .1008 is proposed for amendment as follows:

**15A NCAC 02H .1008 FAST TRACK PROCESS: SUBMITTAL AND REVIEW OF AS-BUILT AND ISSUANCE OF FINAL PERMIT**

(1) CONSTRUCTION REQUIREMENTS. Engineering design documents shall be available upon request by the Division.

(2) PROJECT COMPLETION. Approval of the as-built stormwater plans shall be required before the erosion and sediment control plan may be closed out.

(3) AS-BUILT PACKAGE SUBMITTAL. The applicant shall submit an as-built package within 30 calendar days of completion of the project. The as-built package shall include the following:

(a) An As-Built Certification Form signed and sealed by the engineer of record and signed by the applicant;

(b) A signed, sealed and dated as-built calculations for the SCMs and calculations of the project density;

(c) When an SCM that has an MDC requiring evaluation of the SHWT or the soil infiltration rate, the applicant shall include the signed, sealed, and dated soils report based on field evaluation indicating the depth of SHWT within the footprint of the SCM and a map of the boring locations and boring logs. The report shall also include the soil type, infiltration rate and method for determining the infiltration rate. Soils infiltration shall be signed and sealed by a licensed soil scientist;

(d) Signed, sealed, and dated minimum 22 inches by 34 inches plans of the entire site at a legible scale, which shall include:

(i) Project name, engineer and firm, and dates;

(ii) Location map with street names and SR numbers, legend, and north arrow;

(iii) Dimensioned project or project phase boundary with bearings and distances;

(iv) The boundaries of all surface waters, regulatory flood zones, and vegetated setbacks and protected riparian buffers or a note on the plans that none exist; and

(v) Site layout showing all built-upon areas, maintenance access routes and easements, utility easements, drainage easements, public rights of way, stormwater collection systems and SCMs at ultimate build-out. The information on stormwater collection systems shall include the locations of the inlets, outlets, pipes and swales as well as the inverts and diameters of pipes, excluding driveway culverts.

(e) Signed, sealed, and dated full-sized as-built plan details of each SCM in both plan view at a scale of one inch equal to 30 feet or larger and cross-section. Other scales may be accepted if the scale is such that all details are legible on a copy. The as-built plan details shall include:

(i) Dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;

(ii) All applicable conveyance devices, including (1) inlet device, (2) bypass structure, (3) pretreatment area, (4) flow distribution device, (5) underdrains, (6) outlet device, (7) energy dissipater, and (8) level spreader; and

(iii) Specification sheets for materials used in the SCM, such as planting media, filter media and aggregate.

(f) Signed, sealed, and dated as-built planting plans for each stormwater wetland and bioretention cell (or typical) at a scale of one inch equals 20 feet or larger. The planting plan shall include:

(i) Plant layout with species names and locations

(ii) Total number and sizes of all plant species; and

(iii) For stormwater wetlands, a delineation of planting zones.

(g) A copy of the signed, notarized, and recorded operation and maintenance (O & M) agreement including an estimation of the maintenance cost;

(h) A copy of the recorded documents deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the BUA thresholds;

(i) A copy of the recorded drainage easements; and

(j) If the as-builts show variation from the MDC, then the applicant shall explain the variation and, if the applicant deems it appropriate, shall demonstrate how the project protects water quality standards. The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements.  No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards.

(4) SITE INSPECTION. The Division may perform a site inspection of the project to ensure that the as-built drawings are an accurate depiction of the stormwater management plan as appropriate based on the project characteristics. The Division may inspect the site either:

(a) Before the final stormwater permit is issued by scheduling an inspection with the applicant. If the applicant does not agree to the inspection date selected by the Division, then the Division shall work with the applicant to schedule another inspection date; however, in this case, the Division’s deadline for action shall be modified per Item (5) below.

(b) After issuance of the final stormwater permit as part of the sediment and erosion control plan close-out.

(5) DIVISION REVIEW OF THE AS-BUILT PACKAGE. Within 15 calendar days after receipt of the as-built package, or additional or amended information, the Division shall notify the applicant if additional information is necessary to determine compliance with this Section. The applicant shall have 30 calendar days from the date the letter was sent to submit the required information to the Division. Applicants who fail to provide the information requested may be subject to enforcement action per Item (8). If the as-built package is complete, then within 40 days after receipt or 30 days after completion of a site inspection that has been rescheduled at the request of the applicant, the Division shall take one of the following actions:

(a) Issue the final permit in accordance with .1003 of this Rule if the as-built package meets the MDC;

(b) Draft a permit with special conditions to address minor deficiencies in the stormwater plan in accordance with Item (6) below;

(c) Issue a Notice of Deficiency to address significant deficiencies in the stormwater plan in accordance with Item (7) below; or

(d) Issue a Notice of Initiation of Enforcement Action for catastrophic non-compliance with the MDC in accordance with Item (8) below.

(6) PERMIT WITH SPECIAL CONDITIONS. If the Division determines that the stormwater plan has minor deviations from the MDC, then it shall draft a permit with special conditions to bring the project into compliance with the MDC. The Division shall provide the applicant with a draft of the proposed permit and the applicant shall have 10 days to submit comments or concerns back to the Division. After the draft permit is reviewed by the applicant, the Division shall issue a final permit with special conditions that includes the following:

(a) A list of corrections to be made to the stormwater plan to bring the project into compliance with the MDC; and

(b) A proposed schedule of compliance for meeting the MDC.

(7) NOTICE OF DEFICIENCY. If the Division determines that the stormwater plan does not meet the MDC to a greater extent than a minor deviation pursuant to Item (6), but does not meet Sub-Items (8)(a) through (8)(e), then the Division shall send a Notice of Deficiency by certified mail to the applicant. The Notice of Deficiency shall include a list of the deficiencies with reference to the specific MDC that have not been met. Within 30 days of receipt of a Notice of Deficiency, applicants shall submit a “Schedule for Compliance with the MDC” to the Division for its review and approval. Upon Division approval, the applicant shall be required to follow the Schedule for Compliance with the MDC or the Division shall initiate Enforcement Action in accordance with Item (8). After the deficiencies in the stormwater plan have been corrected, the applicant shall provide the Division with an updated as-built submittal package for review and approval per the procedures set forth in this Rule.

(8) FAST-TRACK ENFORCEMENT ACTION. Applicants who fail to comply with the requirements of the fast-track stormwater permitting program may be subject to enforcement procedures as set forth in G.S. 143, Article 21. In addition, the Division may respond to non-compliance by filing a written complaint with the North Carolina Board of Examiners for Engineers and Surveyors in accordance with rules and procedures adopted by the Board pursuant to Chapter 89C of the General Statutes citing failure of a professional engineer to adhere to the rules of this Section. The Division may initiate enforcement action if the applicant:

(a) Fails to maintain an engineer of record for the duration of the entire project;

(b) Fails to provide information that is needed to complete the as-built submittal package;

(c) Misrepresents the project on the as-built plans;

(d) Fails to adhere to an approved Schedule for Compliance in response to a Notice of Deficiency;

(e) Fails to comply with the MDC during the permitting process; or

(f) Fails to adhere to final permit conditions.

(9) EXCEPTIONS TO ABOVE TIMEFRAMES. If the Division fails to act within the timelines specified in Item (5) the project shall be considered to be approved unless:

(a) The applicant does not agree to the inspection date proposed by the Division per Sub-item (4)(a).

(b) The applicant agrees, in writing, to a longer period;

(c) The applicant fails to furnish information necessary for the Director’s decision;

(d) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Director’s decision, or:

(e) Information necessary for the Director’s decision is unavailable. mmm