



North Carolina Department of Environment and Natural Resources

Division of Water Quality

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Director

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**MEMORANDUM**

August 17, 2010

TO: Ted Bush, Aquifer Protection Section  
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Dan Blaisdell, Construction Grants and Loan Section  
Jay Sauber, Environmental Sciences Section  
Alan Clark, Planning Section

FROM: Coleen H. Sullins (*original initialed by CHS*)

**SUBJECT: SPECIAL ORDERS BY CONSENT (SOC) GUIDANCE DOCUMENT**

**WHAT IS A SPECIAL ORDER BY CONSENT?**

A Special Order by Consent (SOC) is an important tool used to enforce water quality statutes and regulations. An SOC is a special type of administrative order whereby the Environmental Management Commission (EMC) enters into an agreement with a permittee experiencing noncompliance with statutes, rules or permit requirements. The SOC specifies action designed to reduce, eliminate or prevent water quality degradation by bringing the permittee back into compliance. An SOC may direct the facility to take, or refrain from taking, an action or to achieve a specific result within a period of time specified in the SOC. In exchange for a commitment to comply with the terms of the SOC, the permittee may be granted temporary and conditional modification of permit conditions during the period of the SOC. If the permittee fails to comply with the terms and conditions of the SOC, stipulated penalties and possible judicial enforcement may be imposed.

(The EMC is also authorized to enter special orders without the consent of the permittee. In such cases, the permittee may file a petition for a contested case under North Carolina General Statute (NCGS) 150B-23 within 30 days after the special order without consent is issued. If the affected facility does not file a petition within the 30-day period, the special order without consent becomes final and is not subject to review.)

**PURPOSE OF GUIDELINES**

Requests for Special Orders by Consent are reviewed and evaluated by the Division of Water Quality (DWQ). The following guidance has been developed to clarify the requirements, set forth in NCGS 143-215.2 and T15A NCAC 2H .1200, for reviewing and evaluating SOC requests and to ensure that DWQ staff correctly and consistently implements these requirements. These guidelines are not intended to supplant the existing rules and requirements. DWQ staff should always refer to NCGS 143-215.2 and T15A NCAC 2H .1200 when developing new or

amended SOCs. These guidelines do not introduce new criteria for approving SOC requests but are intended to assist staff in processing, reviewing and evaluating such requests.

This SOC guidance is intended to promote consistency and clarify roles and responsibilities of staff in evaluating, preparing and administering SOCs. This guidance also specifies tracking activities that must be performed using BIMS. Through the use of BIMS, staff will be able to obtain accurate information concerning not only individual SOCs but also overall program performance.

## **LEGAL AUTHORITY**

The foundational authority to issue SOCs is in North Carolina General Statute 143-215.2 (see [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143/GS\\_143-215.2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-215.2.pdf)). The initial authority for issuing SOCs is vested in the EMC, but the EMC has delegated to the Director of DWQ the authority to take final action on most SOCs, pursuant to T15A NCAC 2H .1204. Therefore, DWQ takes the lead in evaluating SOC requests, negotiating the terms of SOCs, preparing drafts and other SOC documents and making recommendations to the Director. The procedures that must be followed by DWQ staff in the review, development and issuance of an SOC are found at T15A NCAC 2H .1200 through 2H .1206 (see <http://h2o.enr.state.nc/admin/rules/2H.1200.pdf>).

## **QUALIFYING FOR AN SOC – [T15A NCAC 2H .1206(b)]**

What facilities may enter into an SOC? When considering whether an SOC might be an appropriate enforcement tool, it should be “demonstrated by the permittee to the satisfaction of the Director that noncompliance is **not** due to failure by the permittee to properly operate, manage and maintain the wastewater treatment system and that the existing wastewater treatment system is being operated in such a way as to attain the highest degree of treatment possible under the existing conditions.” [T15A NCAC 2H .1206(b)(1)]. In making this determination, the applicant “must also evaluate all reasonably available low-capital-cost interim improvements, even though they may not be directly related to the final treatment option.” Through a report prepared by a qualified independent consultant with expertise in wastewater treatment, the requesting applicant must demonstrate that the violations are not due to failure to properly operate, manage or maintain the facility and that it is operating the existing facility appropriately. (This report may be in the form of a 201 plan or other recent evaluation report.)

Example: an SOC may be appropriate when a facility’s noncompliance is due to a design deficiency of the treatment plant that makes it unable to meet effluent permit limits. This scenario can occur when there is water quality or federally mandated limit changes for specific industrial classes or a facility is nearing or has reached its hydraulic capacity. Typically, such noncompliance can only be resolved by construction of new or modified treatment components. As stated above, this must be shown by the requesting permittee through a report prepared by a qualified independent consultant with expertise in the type of influent wastewater and treatment works.

An SOC may also be appropriate even where there is not a "need to construct" condition. For example, a municipality might experience noncompliance involving whole effluent toxicity or

some known toxic parameter (e.g., sodium, surfactants, cyanide or mercury). In such cases, it may be appropriate to issue an SOC that requires the facility to conduct a study of industrial users or other potential sources. Rather than require construction of new treatment facilities, the SOC might direct the permittee to take action through its pretreatment program to modify, reduce or eliminate the introduction of the wastewater influent flow streams that lead to the noncompliance.

Additionally, while SOCs are generally issued to permitted facilities that have been noncompliant with regulatory requirements or permit conditions, **SOCs may also be issued to non-permitted entities that are in violation of State rules or regulations.** For example, DWQ may discover a discharging facility that never received a NPDES permit. DWQ has used SOCs in these situations to require the facility to perform monitoring and to adhere to performance standards while obtaining a permit, improving treatment facilities or connecting to a sewer system. These cases may be rare, but the SOC is a tool that can help speed the process toward an acceptable end.

## **SOC PROCESS, ROLES & RESPONSIBILITIES**

### **Pre-Application Meeting and Regional Office Concurrence**

As the lead enforcement agency, the regional office should evaluate the particular circumstances relating to a facility's noncompliance in order to determine whether the criteria for coverage under an SOC are met (see "Qualifying for an SOC" above). If the regional office finds that an SOC might be the appropriate enforcement option, the regional office should contact the facility to schedule a meeting with the facility. At this initial meeting, the region should explain the purpose of an SOC, provide an SOC application form (see Appendix 1) to the facility, and make the facility aware that only the submittal of a complete SOC application initiates the SOC process. Until the SOC process is initiated, Division staff should refrain from making any promises or guarantees about the specifics of the proposed Order. It is suggested that the regional staff should contact the appropriate central office staff regarding issues to be discussed at the pre-application meeting if deemed appropriate. Internal and external communication is vital to the successful outcome of the SOC process.

After the pre-application meeting, the facility should send a completed application, supporting documentation, and the appropriate fee to the central office for processing as soon as possible. *Note: If the application package is initially sent to the regional office, staff should forward all materials to the central office immediately for processing.* It should be made clear to the facility that enforcement will continue until an application for an SOC has been received and determined to be complete. Further, at this time the permittee should be informed that if, at any point, the Division determines the permittee is unnecessarily delaying the SOC process, then enforcement will resume and include all outstanding violations up to that point.

### **Completeness Review**

Upon receipt of the completed application, the appropriate central office staff will ensure that all required components of the SOC application package are present. A form signed by the regional office supervisor (see Appendix 5) indicating that the facility meets the criteria for an SOC should accompany the application package. DWQ cannot process an application package unless the applicant includes all of the following:

- Permit-related information as specified in the application form,
- The pre-application form signed by the regional supervisor,
- Other information such as additional flow requests, the necessity of the SOC, a predicted compliance schedule, and identification of funding sources,
- A recent evaluation report prepared by an independent consultant with expertise in wastewater (in triplicate),
- One original and two copies of the completed and appropriately executed application form, along with all required attachments, and
- A non-refundable processing fee of \$400.00.

**Note:** Refer to T15A NCAC 2H .1206 for signatory requirements.

### **SOC Application Acknowledgement or Return**

Within seven business days after receipt of the SOC application, central office staff should acknowledge, in writing, to the applicant that the application package is either complete or incomplete. Incomplete applications should be returned with a letter describing the deficiency; application fees are nonrefundable. Upon acknowledgement of a complete application package, the central office staff should forward a copy of the SOC application package to the appropriate regional office for review and to the Aquatic Toxicology Unit if toxicity is an issue. **At this time, when an SOC application is deemed complete and ready for processing, enforcement of violations addressed by the proposed SOC will be suspended.** *Note: Only violations associated with parameters that will be modified by the SOC will receive temporary waiver of enforcement action (reflected in BIMS as “No Action, SOC Pending”). All other violations should be timely addressed according to the Division’s enforcement policy.* The central office is responsible for administrative processing and for updating the BIMS database with specific information associated with the SOC application. The specific responsibilities for central office staff are outlined in Appendix 4. Within the acknowledgement letter, the applicant should be informed that if, at any point, the Division determines the permittee is unnecessarily delaying the SOC process, then enforcement will resume and include all outstanding violations.

### **Evaluating the Application and Drafting the Proposed SOC**

When the regional office receives the SOC application package from the central office after it has been processed, regional office staff should evaluate the application in accordance with the procedures set out in T15A NCAC 2H .1206. Regional staff should start preparing the SOC draft as the proposed terms of the SOC are developed. The goal is to draft an SOC within 60 days. If draft copies of the SOC are transmitted electronically to the applicant, then the copies should be in pdf format, and not as a word document. It is also recommended to indicate the version number on the draft SOC to assist with the revision process. When developing an SOC, there are several issues that regional office staff must consider, including:

#### ***Upfront Penalties – [T15A NCAC 2H .1206(c)(3)]***

Upfront penalties are monetary settlements used to address violations that occurred before the signing of an SOC. North Carolina Administrative Code, Title 15A, Section 2H .1206(c)(3) states, *“A monetary settlement will normally be included in the order (SOC) to settle previous violations.”* This will hold true whether the SOC is new or being amended. If an SOC is being amended and there are unaddressed violations associated with the SOC, it may be more efficient

to settle the SOC violations as an upfront penalty within the amended SOC rather than pursuing stipulated penalties under the original SOC.

In determining the amount of an upfront penalty, regional staff should consider all unaddressed violations and any unpaid civil penalty assessments. An upfront penalty is a monetary settlement for previous violations.

DWQ may waive upfront penalties only in limited circumstances. For example, the upfront penalty may be waived where payment of the upfront penalty will prevent necessary remedial actions **and the applicant has provided proof of inability to pay** or where the violations were beyond the control of the applicant. Permit violations caused by a failure to undertake reasonable preventive maintenance should not be considered as a factor beyond the control of the applicant. Upsets due to discharges from pretreatment facilities should also be closely evaluated in terms of permittee control. If the upset could have been prevented with greater oversight or more stringent pretreatment requirements by the treatment facility, an upfront penalty may be warranted.

Upfront penalties should be resolved with the applicant as early as possible in the negotiation process. If the negotiations become contentious, appropriate staff should advise the applicant that the issue of penalties for past violations must be resolved before DWQ can support the SOC. If the applicant withdraws its request for any reason, the violations should then be addressed in an enforcement action as soon as possible.

The regional office should develop a list of all unsettled violations (excluding those violations previously addressed by a Notice of Violation) of the facility so that the past violations will be considered when calculating an upfront penalty, which includes all unaddressed violations and any unpaid civil penalty assessments. This total penalty amount should be used as the original basis for negotiation of an upfront penalty. Please note that enforcement costs are not negotiable and cannot be reduced in penalty negotiations. During negotiations:

- a. **Where justified**, the regional office is authorized to offer an upfront penalty reduced to 80% of the total amount of outstanding penalties.
- b. If the regional office wishes to reduce penalties by more than 20%, staff should present reasons for the reduction in writing to the Section Chief. The justification for the reduction will be evaluated as part of the SOC review process.
- c. The Section Chief is authorized to reduce the upfront penalty by as much as 50%.
- d. If the regional office and the Section Chief agree that a reduction of more than 50% of the proposed penalty is appropriate, the Section Chief will refer the request to the Director for concurrence.
- e. A portion of the total penalty may be held in abeyance until the expiration of the SOC. If the applicant has successfully met all the terms of the SOC and is in compliance at that time, the amount held in abeyance may be fully remitted. The abeyance amount and the amount of upfront penalties should equal the total negotiated penalties, subject to the previous discussions above. As much as 50% of the total may be held in abeyance at the recommendation of the regional office. The Director may further increase this amount.

### ***Compliance Schedule – [T15A NCAC 2H .1206(c)]***

Special orders must contain a compliance schedule that provides deadlines for applicants to achieve specific tasks. In negotiating the compliance schedule, it is highly recommended that the applicant bear the burden of identifying and justifying specific activities and a reasonable schedule for compliance. To reduce the administrative burden, the compliance schedule milestones should be limited in number (preferably between three and five). However, the compliance schedule must be sufficiently detailed to ensure that the facility is constantly progressing toward final compliance. Typical compliance schedule activities are: "Begin Construction", "End Construction", and "Achieve Final Compliance" for specific projects or activities. Non-discharge SOCs typically include deadlines for submitting progress reports or monitoring well installations.

Upon completion of construction or achievement of final compliance, the applicant should provide a certification of completion from a professional engineer verifying that the construction has actually been completed and was in conformity with the approved Authorization to Construct. ***The date on this certification should be compared with the "End Construction" schedule date to determine compliance.*** Likewise, the applicant should submit dated notices of compliance or non-compliance to the regional supervisor to address schedule dates. These issues should be discussed in detail with the applicant.

### ***Modifying NPDES Effluent Parameters***

For SOCs that address NPDES effluent issues, the applicant shall identify all parameters with limit-violation issues. These parameters should be the only ones considered for modified limits, and they should be noted on the SOC application. However, if review shows that the facility may not be able to meet limits for parameters other than those identified in the application, the matter should be discussed with the applicant.

The interim effluent limits must be based on the optimum expected efficiency of the existing treatment system. If improvements to the system are anticipated through phased construction or upgrades, the interim limits must reflect these improvements. Similarly, if treatment units are to be taken offline during construction or upgrades, the interim limits may be modified during the period of actual outage. [T15A NCAC 2H.1206(c)(2)]

All effluent parameter limits and monitoring requirements will be shown on the attachment page(s) exactly as they are shown in either the active NPDES permit or an NPDES permit at public notice. On the attachment page(s), lines containing modified parameters should be placed in bold letters along with the identification "(SOC Modified)" to signify at a glance these are the only parameters modified. This applies to any new or amended SOC.

### ***Allowance of Additional Flow (NPDES) – [T15A NCAC 2H .1206(d)]***

When SOCs include requests for additional influent flow, the regional office must request an in-stream assessment for 67(b) analysis from the NPDES program (see Appendix 6). In-stream assessments for additional flow are necessary only when parameters being relaxed are those that are oxygen consuming (BOD, COD, D.O., or NH<sub>3</sub>-N). The request for an in-stream assessment should be submitted to the Point Source Branch as soon as possible to ensure sufficient time for review. [See T15A NCAC 2H .1206(d)(E)(i) – (v) for specific requirements]

When considering whether to allow additional flow in an SOC, only those sources that have been specifically identified by the applicant may be considered in the calculation of the additional flow amount. Those sources listed as miscellaneous or "other" should not be considered where the applicant has not provided documentation to demonstrate that flow from these sources is reasonably likely to be added during the term of the SOC. DWQ staff will also need to determine if the additional flows will be likely to cause further sanitary sewer overflows during the period of the SOC. A commitment by the applicant to reduce inflow and infiltration during the term of the SOC may be taken into account when determining whether additional flows are granted. Also, additional flows must not result in any significant degradation in the quality of the waters ultimately receiving the wastewater during flow conditions between and including the 7-day 10-year minimum (7Q10) and the average flow. Staff must consider any special or protected waters in conducting this evaluation.

***Allowance of Additional Flow (APS Permits)***

When SOCs allow additional flow into non-discharging disposal systems, the regional office must assess potential impacts. For example, modeling may be necessary to assess whether or not groundwater standards will be violated. The applicant should show that there will be no adverse impacts to ground or surface waters due to the additional flow and should list the measures taken to ensure this.

***Stipulated Penalties – [T15A NCAC 2H .1206(b)(3)]***

A stipulated penalty is a monetary fine associated with failure to meet specified conditions, requirements (including interim effluent limits) or compliance schedules in an SOC. Stipulated penalties must be included in the SOC and are intended to provide an incentive for compliance with all schedule dates and interim effluent limits. Regional supervisors are authorized to assess stipulated penalties. **Requests to modify or waive them must be sent to the central office for the Director's review**, along with the region's recommendation. Collection of stipulated penalties should be timely; never wait until the end of the SOC period to collect stipulated penalties.

The following stipulated penalties should typically be included in an SOC:

- a. For failure to meet compliance schedule deadlines for construction related activities: the recommended penalty for minor facilities is \$500 per day. For major facilities, the recommendation is \$1000 per day. In no event shall the daily penalties decrease over time.
- b. For failure to meet interim or modified limits: \$1,000 per occurrence for monthly average violations and \$500 per occurrence for daily maximum or weekly average violations.
- c. For monitoring frequency violations for modified parameters (except toxicity): \$100 per event.
- d. For monitoring frequency violations for toxicity: \$2,000 per event.
- e. For failure to achieve compliance with final effluent limits (or eliminate discharge): a \$5,000 single penalty.
- f. For failure to submit progress reports: For minor facilities: \$500 for the first violation; penalty doubles with each subsequent assessment for late reports. For major facilities: \$1000 for the first violation; penalty doubles with each subsequent assessment.

These amounts are recommendations only. They may be adjusted based upon the potential negative impacts to water quality which might result from non-compliance with the terms and conditions of the SOC, the compliance history of the violator as well as other appropriate factors.

### **Central Office Review**

The regional office must route the draft SOC to the appropriate central office staff for review. Regional office staff should transmit an electronic copy of the draft SOC to its central office contact. If the expertise of other units (e.g., Aquatic Toxicology Unit) within DWQ is needed, central office staff will send a copy of the draft SOC to that unit for review and comment. The draft and any proposed changes would then be forwarded to the appropriate unit supervisor, and subsequently to the appropriate Section Chief. If the Section Chief approves the draft SOC as written, the central office staff will mail it to the applicant for review and signing and copy the regional office on the transmittal letter and the draft SOC. If the Section Chief recommends changes to the draft SOC, the issues will be discussed with the regional office. A copy of the approved SOC will be forwarded to the regional office and presented to the applicant for review and signing. The applicant will be given 15 business days to review, sign, and return the draft SOC to the central office. Once a signed copy of the proposed SOC has been received from the applicant, the central office staff will prepare the document for public notice (see below). A more detailed discussion of central office SOC document processing is included in Appendix 2.

### **Public Notice – [T15A NCAC 2H .1203]**

After the applicant has returned a signed and dated copy of the draft SOC to the central office, central office staff will prepare it for public notice within the next two weeks. All new SOCs must be submitted for public notice. However, an amendment to an existing SOC that extends the "achieve final compliance date" by no more than four months does not require public notice.

Notice of a proposed SOC must be given to the proper State, interstate, and federal agencies, to interested persons, and to the public. **State law requires that public notice be given by publication of the notice one time in at least one newspaper having general circulation within the applicant's county.** Central office staff should try to identify through web resources which newspapers are most appropriate for publication of notice, including any local newspapers, in order to notify residents of the county in which the facility is located. Any other data considered appropriate may also be provided to those notified. The notice shall be given at least 45 days prior to any final action.

Anyone who wishes to have a public meeting on the proposed SOC may request a public meeting in writing. If there is sufficient public interest in a public meeting, as determined by the Director, a public meeting may be required before entering into an SOC, or before denial of an SOC by the EMC. Notice of the public meeting should be published in the same newspaper(s) as was the initial Notice of Intent to enter into the SOC. Central office staff should make all reasonable efforts to post notice of the public meeting on DWQ's website at least 30 days prior to the scheduled date of the public meeting. If there are no comments, or if the comments received do not support a public meeting, as determined by the Director, the SOC will be routed to the Director within 15 days after the close of the 30-day comment period for final review and issuance (signing and dating) of the SOC. The original will remain in the central office files and a copy of the signed document will be forwarded to the applicant.



If written comments are received, the written comments should be submitted along with the draft SOC to the Director for review. If the Director chooses to hold a public meeting as a result of public comments, she will select a staff member (hearing officer) to preside at the public meeting and prepare a written summary and recommendation to be submitted to the EMC. The hearing officer will then present a report to the EMC. The EMC may approve, approve with modifications or deny the proposed SOC.

### **Amendments**

Any SOC may be amended by the Director. Amendments which result in minor modifications may be made without public notice. With increased focus on governmental transparency, determination of whether or not a modification is minor should be well documented. For example, a facility may need additional time to meet the requirements of the compliance schedule. The Director may reallocate allowable flow or extend interim dates in the Order provided the modifications do not extend the final compliance date by more than four months. The application form for an amendment is shown in Appendix 3. *Note: An SOC can be modified to extend dates up to four months total, whether in one or more modifications without requiring public notice.* As with all changes, please make sure that when considering time extensions that sufficient time is allocated to avoid back-to-back modifications.

All amendment requests require submittal of an amended SOC application package to the central office. The application package includes (at a minimum):

- One original and two copies of the completed and appropriately executed amended SOC application form, along with all required attachments, and
- A non-refundable processing fee of \$400.

Requests for amendments should be reviewed and evaluated using a similar process to that used in issuing an SOC, except for those that seek minor modifications. In these cases, the Director may simply amend and issue the SOC after obtaining the signature of the permittee and a public notice period is not required. However, in all cases both the central office and regional office will be aware of the modifications PRIOR to finalization of the change.

When drafting amended SOCs, the original SOC is used as the foundation for the amended Order. Changes incorporated into the amended SOC should be distinguished from the original text through the employment of boldface type, thereby allowing for easy identification of the items amended. In addition, it should be made clear in the cover letters transmitting the draft and final versions of the amended SOC the changes incorporated into the amended SOC.

As discussed previously, inclusion of an upfront penalty may be warranted if an SOC is being amended and there are unaddressed violations associated with the SOC (refer to section on Upfront Penalties).

### **Terminating the Order**

In some cases the permittee may request that the SOC be rescinded prior to the negotiated date. In this case a written request must be submitted to the central office, with a copy going to the regional office. The request at a minimum must outline that compliance has been obtained, all work has been completed, PE certification is included and any other information deemed necessary by the regional office is obtained.

When the SOC expires, the permittee must have met all schedule dates and permit effluent limits, unless the SOC has been amended. The facility should request in writing to end the SOC or withdraw the application; central office staff and regional office staff should discuss the request and come to an agreement. It is the duty of the central office staff to enter the SOC withdrawn date into the appropriate field in BIMS.

### **Evaluating SOC Compliance**

The regional office is responsible for tracking each SOC for compliance with modified requirements and compliance schedules, and for updating BIMS accordingly. The regional supervisor has been delegated the authority to assess stipulated penalties. Once he/she determines that the facility is not in compliance with the terms or conditions of the SOC, the following guidelines apply:

- The regional office issues a notice of violation (NOV) typically within 30 days of first knowledge of the violation. The NOV will contain a mandated response date giving the facility an opportunity to respond to the violations by a designated date, typically 10 to 15 days.
- After the facility has responded to the NOV (or after the designated date has passed with no response from the facility), the regional office will either assess full stipulated penalties or make a recommendation to the Section Chief to waive or reduce them if it is determined the violation was caused by an act of God, an act of war, an intentional act or omission of a third party (but this defense shall not be available if the act or omission is that of an employee, agent or contractor for the Town), an extraordinary event beyond the permittee's control (Contractor delays or failure to obtain funding will not be considered as events beyond the permittee's control), or any combination of the above causes. It should be noted that stipulated penalties are in fact already stipulated to by the permittee/violator and should be treated as such.

Division oversight should be administered regularly throughout the term of the SOC. Regular oversight will convey to the facility the importance of ensuring the terms of the Order are met. It will keep the facility aware of its project schedules with the hope the project remains on course. It will provide early detection for recognizing problems that may lead to disruption in the schedule activities.

Regional staff are encouraged to contact facilities monthly and remind them of upcoming milestone dates and progress reports coming due, as well as to determine if any obstacles exist that might impede the progress of the construction activities (delays in funding or in obtaining needed permits). *Note: Even though Division staff is encouraged to provide this courtesy oversight, the ultimate responsibility of ensuring the terms of the SOC are met relies exclusively with the SOC holder.*

Shortly after the SOC expires and all outstanding SOC issues have been settled and all items due have been received and after receiving concurrence from the regional office, the central office will prepare an SOC closure letter to the facility. The letter will affirm the SOC has expired and the terms/conditions within the Order are no longer valid.

## **CONCLUSION**

A well-crafted SOC is a useful tool for resolving past violations, addressing present incidents of noncompliance, and ensuring better effluent quality. While the specifics of individual SOC's vary, adherence to this guidance document will help to ensure a greater degree of consistency within DWQ in the development and substance of SOC's. Clarification of the roles and actions of the various staff members can also increase the speed with which SOC's are prepared and provide a framework for comprehensive oversight upon issuance. DWQ hopes that these guidelines will achieve the goal of making the program more effective.

**APPENDIX 1**

**SOC APPLICATION FORM**

**STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF WATER QUALITY**

**APPLICATION FOR A SPECIAL ORDER BY CONSENT (SOC)**

**I. PERMIT RELATED INFORMATION:**

1. Applicant (corporation, individual, or other): \_\_\_\_\_

2. Print or Type Owner's or Signing Official's Name and Title:

\_\_\_\_\_

3. Facility Name (as shown on Permit): \_\_\_\_\_

4. Owner Phone: \_\_\_\_\_ (or) \_\_\_\_\_

5. Owner Email: \_\_\_\_\_

4. Application Date: \_\_\_\_\_

5. NPDES Permit No. (if applicable): \_\_\_\_\_

6. Name of the specific wastewater treatment facility (*if different from I.3. above*):

\_\_\_\_\_

**II. PRE-APPLICATION MEETING:**

Prior to submitting this completed application form, applicants must meet with the appropriate regional office staff to discuss whether or not an SOC is appropriate for this situation. Please note the date this meeting occurred and who represented the permittee:  
Representative: \_\_\_\_\_ Date: \_\_\_\_\_.

**III. ADDITIONAL FLOW OR FLOW REALLOCATION:**

In accordance with NCGS 143-215.67(b), only facilities owned by a unit of government may request additional flow.

Additional flow may be allowed under an SOC only in specific circumstances. These circumstances may include eliminating discharges that are not compliant with an NPDES or Non-discharge permit. These circumstances do not include failure to perform proper maintenance of treatment systems, collection systems or disposal systems. When requesting additional flow, the facility must include its justification and supporting documentation.

If the requested additional flow is **non-domestic**, the facility must be able to demonstrate the ability to effectively treat the waste and dispose of residuals. The applicant must provide a detailed analysis of the constituents in the proposed non-domestic wastewater.

The total domestic additional flow requested: \_\_\_\_\_ gallons per day.

The total non-domestic additional flow requested: \_\_\_\_\_ gallons per day.

The total additional flow (*sum of the above*): \_\_\_\_\_ gallons per day.

Please attach a detailed description or project listing of the proposed allocation for additional flow, with an explanation of how flow quantities were estimated. Further, any additional flow requested must be justified by a complete analysis, by the permittee, that additional flow will not adversely impact wastewater collection/treatment facilities or surface waters.

#### **IV. NECESSITY NARRATIVE:**

Please attach a narrative providing a detailed explanation of the circumstances regarding the necessity of the proposed SOC. Include the following issues:

- Existing and/or unavoidable future violations(s) of permit conditions or limits(s),
- The existing treatment process and any process modifications that have been made to date to ensure optimum performance of existing facilities,
- Collection system rehabilitation work completed or scheduled (including dates),
- Coordination with industrial users regarding their discharges or pretreatment facilities. Identify any non-compliant significant industrial users and measure(s) proposed or already taken to bring the pretreatment facilities back into compliance. If any industrial facilities are currently under consent agreements, please attach these agreements,
- Date and outcome of last Industrial Waste Survey,
- Whether or not the facility is acting as a regional facility receiving wastewater from other municipalities having independent pretreatment programs.

#### **V. CERTIFICATION:**

The applicant must submit a report prepared by an independent professional with expertise in wastewater treatment. This report must address the following:

- An evaluation of existing treatment units, operational procedures and recommendations as to how the efficiencies of these facilities can be maximized. The person in charge of such evaluation must sign this document.
- A certification that these facilities could not be operated in a manner that would achieve compliance with final permit limits. The person making such determination must sign this certification.
- The effluent limits that the facility could be expected to meet if operated at their maximum efficiency during the term of the requested SOC (be sure to consider interim construction phases).
- Any other actions taken to correct problems prior to requesting the SOC.

## **VI. PREDICTED COMPLIANCE SCHEDULE:**

The applicant must submit a detailed listing of activities along with time frames that are necessary to bring the facility into compliance. This schedule should include milestone dates for beginning construction, ending construction, and achieving final compliance at a minimum. In determining the milestone dates, the following should be considered:

- Time for submitting plans, specifications and appropriate engineering reports to DWQ for review and approval.
- Occurrence of major construction activities that are likely to affect facility performance (units out of service, diversion of flows, etc.) to include a plan of action to minimize impacts to surface waters.
- Infiltration/Inflow work, if necessary.
- Industrial users achieving compliance with their pretreatment permits if applicable.
- Toxicity Reduction Evaluations (TRE), if necessary.

## **VII. FUNDING SOURCES IDENTIFICATION:**

The applicant must list the sources of funds utilized to complete the work needed to bring the facility into compliance. Possible funding sources include but are not limited to loan commitments, bonds, letters of credit, block grants and cash reserves. The applicant must show that the funds are available, or can be secured in time to meet the schedule outlined as part of this application.

If funding is not available at the beginning of the SOC process, the permittee must submit a copy of all funding applications to ensure that all efforts are being made to secure such funds.

Note: A copy of the application should be sufficient to demonstrate timeliness unless regional office has reason to request all information associated with securing funding.

**THE DIVISION OF WATER QUALITY WILL NOT ACCEPT THIS APPLICATION PACKAGE UNLESS ALL OF THE APPLICABLE ITEMS ARE INCLUDED WITH THE SUBMITTAL.**

### Required Items:

- a. One original and two copies of the completed and appropriately executed application form, along with all required attachments.
  - If the SOC is for a City / Town, the person signing the SOC must be a ranking elected official or other duly authorized employee.
  - If the SOC is for a Corporation / Company / Industry / Other, the person signing the SOC must be a principal executive officer of at least the level of vice-president, or his duly authorized representative.
  - If the SOC is for a School District, the person signing the SOC must be the Superintendent of Schools or other duly authorized employee.

Note: Reference to signatory requirements in SOC's may be found in the North Carolina Administrative Code [T15A NCAC 2H .1206(a)(3)].

- b. The non-refundable Special Order by Consent (SOC) processing fee of \$400.00. A check must be made payable to The Department of Environment and Natural Resources.
- c. An evaluation report prepared by an independent consultant with expertise in wastewater. (in triplicate)

**APPLICANT'S CERTIFICATION:**

*(NO MODIFICATION TO THIS CERTIFICATION IS ACCEPTABLE)*

I, \_\_\_\_\_, attest this application for a Special Order by Consent (SOC) has been reviewed by me and is accurate and complete to the best of my knowledge. I understand if all required parts of this application are not completed and if all required supporting information and attachments are not included, this application package may be returned as incomplete. *(Please be advised that the return of this application does not prevent DWQ from collecting all outstanding penalties upon request).* **Furthermore, I attest by my signature that I fully understand that an upfront penalty, which may satisfy as a full settlement of outstanding violations, may be imposed.** {Note: Reference to upfront penalties in Special Orders by Consent may be found in the North Carolina Administrative Code [T15A NCAC 2H .1206(c)(3)].}

\_\_\_\_\_  
Signature of Signing Official

Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Signing Official

THE COMPLETED APPLICATION PACKAGE, INCLUDING THE ORIGINAL AND TWO COPIES OF ALL SUPPORTING INFORMATION AND MATERIALS, SHOULD BE SENT TO THE FOLLOWING ADDRESS:

NORTH CAROLINA DIVISION OF WATER QUALITY  
POINT SOURCE BRANCH  
1617 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1617

IF THIS APPLICATION IS FOR A NON-DISCHARGE SYSTEM, THEN SEND TO:

NORTH CAROLINA DIVISION OF WATER QUALITY  
AQUIFER PROTECTION SECTION  
1636 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1636

## APPENDIX 2

### DETAILED PROCEDURES FOR THE CENTRAL OFFICE STAFF

#### I. Draft SOC Review Procedures

1. Review the application, including attachments.
2. Determine which WQ unit is the lead, and identify other central office contacts.
3. Review the facility's compliance history and past 24 months of DMRs, NDMRs or SSOs.
4. Review all supporting material sent from the region.
5. Consult an NPDES permit engineer, if needed, to discuss the merits of the independent consultant's treatment plant evaluation. Ensure the reasonableness of the requests made (construction time lines, modified limits, etc.) within the SOC application.
6. If whole effluent toxicity is an issue, then make sure the Aquatic Toxicity Unit is advised.
7. For municipalities, consult the PERCS Unit if appropriate.
8. If extra flow is allowed, make sure the requirements for accepting additional flow are in accordance with G.S. 143-215.67(b) and T15A NCAC 2H .1206(d).
9. Examine the compliance schedule to make sure the SOC sequences logically. A good construction schedule will have timely but attainable dates, with the compliance emphasis placed on the facility and not on the Division. Also, check to see if items have been met already, such as submit plans. Check the proposed expiration date of the SOC. It should be ninety days after the achieve compliance date.
10. Check to see if stipulated penalties are included in the draft. Note if they are appropriate to the potential violation. Stipulated penalties should be in keeping with guidance.
11. Because of the uniqueness of SOCs, it is good to have peers examine the draft SOC. Route the SOC for either an individual or group peer review.
12. Write a summary memo to the unit supervisor. The memo will highlight key points such as facility compliance history, upfront penalties, compliance schedule, modified parameters, instream assessment, and the recommendations of the regional office.
13. Route the memo with the file folder, including the draft SOC and the application.
14. After obtaining comments, notify the region of any changes and corrections to be incorporated into the document.

#### II. Public Comment Period

After the applicant has returned a signed and dated copy of the draft SOC to the central office, the appropriate central office staff will prepare the public notice, which should include the following items:

1. The scope of the SOC
2. A description of the treatment process
3. Receiving stream classification and river basin.
4. Whether or not receiving stream is on the 303d list.
5. Modified parameters, if any.
6. Expiration date of the SOC.
7. Last date for public comment.



The SOC notice will be published for one day. Thirty days from the date the notice is published will be the last day for public comment. Forty-five days after it is published, the director may sign the SOC. By law, the SOC must be signed within sixty days after it is published unless the director receives enough comments to warrant a public meeting.

Public notice shell documents should be utilized. Once the write-up is completed, it should be sent to the unit supervisor for signature and then placed in the NPDES or APS box marked "Public Notices". The administrative assistant process public notices on alternate Wednesdays.

If written comments are received, two copies should be made. One copy will go to the regional office, and one copy will be routed to the director's office through the appropriate unit supervisor.

### **III. SOC Public Hearing Process**

The director may determine that a public meeting is necessary if enough comments are received during the public notice period. Central office staff will then prepare a written notice for the public meeting. The notice should include a description of what is to be discussed, the time, date and location of the public meeting. The director will appoint a staff member to serve as the hearing officer and in keeping with our training progression for new hearing officers a "Second Chair" will be selected. Unless otherwise agreed upon by the hearing officer and second chair and approved by the Director, the role of the second chair will be to assist in the actual hearing by being time keeper or calling speakers as well as having the opportunity to review all relevant information to become familiar with the process and work involved.

If a public meeting is scheduled for an SOC, the appropriate regional office and central office staff should attend. Central office staff will be responsible for assisting the hearing officer as much as possible by maintaining the recording equipment, acting as the recording secretary, assisting with the registration of the speakers and presenting an introduction to the SOC process. Central office staff will provide to the hearing officer a general narrative that outlines why the SOC is deemed necessary, what the basic issues are as well as a description of the hearing outcome (place, time, number attended, and any other information deemed appropriate). Central office staff will also be responsible for maintaining all records obtained from the public meeting.

Once the public meeting is held, the EMC has 90 days to approve, approve with modifications or deny the proposed SOC. If the decision is to deny or modify the SOC, this must be done within 90 days of the public meeting.

### **IV. SOC Issuance Procedures**

At time of issuance, central office lead unit staff will prepare a transmittal letter for the Director's signature. If an upfront penalty is included, the letter must be sent via certified mail.

Central office staff will prepare the appropriate transmittal letter and flag the places for the director's signature. Also, staff should prepare a memo giving a brief compliance history of the facility, a brief description of the compliance schedule, and the recommendations of the regional office. A routing slip should be paper clipped to the SOC folder, and the entire file routed to the director. The director will sign the transmittal letter along with the proposed SOC.

Once the director has signed the SOC, the transmittal letter must be dated and distributed with copies of the SOC as follows. *(Note: The permittee receives the original transmittal letter and a copy of the SOC; copy distribution may differ for Nondischarge-related SOCs):*

1. SOC File –Copy of transmittal letter and **original SOC**
2. Regional Office
3. US EPA Region IV contact – (NPDES permits only)
4. DWQ PCS Coordinator – (NPDES permits only)
5. Aquatic Toxicity Unit – (Toxicity modification only)
6. PERCS Unit – (Collection system or pretreatment related only)
7. Construction Grants & Loans – (If using state or federal funding mechanisms)
8. Central Files
9. APS Land Application Permits and Compliance Unit Supervisor – (Non-discharge related only)

An electronic copy of the final version of the SOC should be routed to the regional office. This will assist staff in preparing amended SOCs if an amended SOC application is received.

## V. Active SOCs

While regional office staff is responsible for tracking SOCs for compliance with modified requirements and compliance schedules and for updating BIMS accordingly, central office staff is responsible for:

1. Preparing and sending SOC annual fee notices to the SOC holders, tracking receipt of the payments, and taking appropriate enforcement action if payments are not received timely. *Note: To facilitate the annual monitoring of SOC fees, central office staff should include the “SOC Annual Fee” activity and date due as an SOC item within BIMS for each year the SOC is active.*
2. Running compliance oversight reports quarterly
  - *SOC Past Due Items.* This report displays those compliance schedule activities where the date due has past and no date is reflected in BIMS to indicate the activity has been met. If items are listed, contact the regional office to determine whether or not the facility met compliance. If compliance was achieved, request regional staff to update BIMS accordingly. If compliance was not met, ensure the regional office will take appropriate enforcement action.
  - *SOC Pending Items.* This report displays those compliance schedule activities that are coming due in the next 3 months. For the activities listed, encourage regional staff to contact the facilities and remind them of the upcoming milestone dates and determine if any obstacles exist that might impede the progress of the construction activities (delays in funding or in obtaining needed permits).
  - *Monitoring Report Violations* (for SOC modified parameters). This report should be viewed for any limit and/or measurement frequency violations for any modified SOC parameter and ensure appropriate enforcement action has been initiated.

If the compliance oversight review shows Division action is needed, contact the regional office and ensure regional staff is aware of the issues.

### APPENDIX 3

#### SOC APPLICATION AMENDMENT FORM

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES  
DIVISION OF WATER QUALITY

#### APPLICATION FOR AN AMENDMENT TO A SPECIAL ORDER BY CONSENT

##### I. GENERAL INFORMATION:

1. Applicant (corporation, individual, or other): \_\_\_\_\_
2. Owner Phone: \_\_\_\_\_ (or) \_\_\_\_\_
3. Owner Email: \_\_\_\_\_
4. Facility Name (must be the same as name on the original SOC):  
\_\_\_\_\_
5. Original SOC No. / Issuance Date: \_\_\_\_\_
6. NPDES Permit No. (if applicable): \_\_\_\_\_
5. Application Date: \_\_\_\_\_

##### II. SOC COMPLIANCE HISTORY:

Please attach a listing of all violations this facility has had under this Order. Include any violation of interim dates, relaxed permit parameters, and existing permit limits.

##### III. ADDITIONAL FLOW OR REALLOCATION OF EXISTING FLOW:

Only facilities owned by a unit of government may request to add additional flow to the treatment system as part of this SOC Amendment in accordance with NCGS 143-215.67(b).

Additional flow may be allowed under an SOC amendment only in specific circumstances. These circumstances may include eliminating discharges that are not compliant with an NPDES or Non-discharge permit as specified in the original SOC. These circumstances do not include failure to perform proper maintenance on treatment systems, collection systems or disposal systems. When requesting additional flow, the facility must include its justification and supporting documentation. If the requested additional flow is non-domestic, the facility must be able to demonstrate the ability to effectively treat the waste and dispose of residuals. The

applicant must provide a detailed analysis of all constituents in the proposed non-domestic wastewater.

The total domestic additional flow requested: \_\_\_\_\_ gallons per day.

The total non-domestic additional flow requested: \_\_\_\_\_ gallons per day.

The total additional flow (*sum of the above*): \_\_\_\_\_ gallons per day.

If a reallocation of existing additional flow is needed the facility must provide justification as to why this reallocation is needed.

Any additional flow that may be allowed will be determined by an analysis of projected adverse impacts on the wastewater treatment facility and/or surface waters.

#### **IV. WHY AN SOC AMENDMENT IS NEEDED:**

Please provide a detailed explanation as to why the SOC amendment is being requested. Include actions already taken to avoid noncompliance with the existing SOC. Also provide details on activities that were delayed.

THE DIVISION OF WATER QUALITY WILL NOT ACCEPT THIS APPLICATION PACKAGE UNLESS ALL OF THE APPLICABLE ITEMS ARE INCLUDED WITH THE SUBMITTAL.

#### Required Items:

- a. One original and two copies of the completed and appropriately executed application form, along with all required attachments.
  - If the SOC Amendment is for a City / Town, the person signing the SOC must be a ranking elected official or other duly authorized employee.
  - If the SOC Amendment is for a Corporation / Company / Industry / Other, the person signing the SOC must be a principal executive officer of at least the level of vice-president, or his duly authorized representative.
  - If the SOC Amendment is for a School District, the person signing the SOC must be the Superintendent of Schools or other duly authorized employee.

Note: Reference to signatory requirements in SOC's may be found in the North Carolina Administrative Code [T15A NCAC 2H .1206(a)(3)].

- b. The non-refundable Special Order by Consent (SOC) processing fee of \$400.00. A check must be made payable to The Department of Environment and Natural Resources.

**APPLICANT’S CERTIFICATION:**

I, \_\_\_\_\_, attest this application for a Special Order by Consent (SOC) amendment has been reviewed by me and is accurate and complete to the best of my knowledge. I understand if all required parts of this application are not completed and if all required supporting information and attachments are not included, this application package may be returned as incomplete. **Furthermore, I attest by my signature that I fully understand that an upfront penalty, which may satisfy as a full settlement for past violations, may be imposed.** {Note: Reference to upfront penalties in Special Orders by Consent may be found in the North Carolina Administrative Code [T15A NCAC 2H .1206(c)(3)].}

\_\_\_\_\_  
Signature of Signing Official

Date \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Signing Official

THE COMPLETED AMENDMENT APPLICATION PACKAGE, INCLUDING ALL SUPPORTING INFORMATION, SHOULD BE SENT TO THE FOLLOWING ADDRESS:

NORTH CAROLINA DIVISION OF WATER QUALITY  
POINT SOURCE BRANCH  
1617 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1617

IF THIS APPLICATION IS FOR A NON-DISCHARGING SYSTEM, THEN SEND TO:

NORTH CAROLINA DIVISION OF WATER QUALITY  
AQUIFER PROTECTION SECTION  
1636 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1636

## APPENDIX 4

### BIMS PROCESSING

Once the proposed SOC has been finalized, approved, and signed by the EMC (or director), the SOC packet is returned to the central office staff for updating of the Basinwide Information Management System (BIMS). The administrative assistant generally enters the check information (\$400 fee). Central office staff enters all dates on the summary tab, except “Application received by RO” and “Draft SOC sent to Central Office”. The regional office staff should enter those two dates. Central office should input required data under (Tasks → Enforcements → Maintain SOC). The following tabs within Maintain SOC should be updated:

1. Up-front Penalty (if applicable)
2. SOC Items
3. SOC Limits
4. Penalty Fee Schedule
5. Covered Enforcements (if any outstanding enforcement cases are being settled through the SOC)

If multiple permits are covered under the SOC and they were not related to the SOC when the application check was entered into BIMS, they can be related on the Related Permits tab by highlighting the desired permit, and clicking add and clicking finish when all desired permits have been related.

The events tab displays the events and dates as the SOC progressed (when the SOC was drafted, reviewed, signed, etc.), and is automatically populated when the dates are entered on the summary tab.

The affiliations tab displays those individuals who are affiliated with the facility or permit. This information is automatically populated.

The SOC pending violation tab displays violations generated by BIMS, where the action code selected was “No action, SOC pending” when the violation was verified. This information is automatically populated.

The source of information used to maintain the various tabs within “Maintain SOC” comes directly from the active SOC document. **Guidance for completing each of the tabs is available in the *BIMS Violations and Enforcement User Manual* located on the BIMS website.** Regional office staff should enter the actual dates the facility meets the schedule items.

To better track SOCs, lists can be generated using the Reports function of BIMS. A list of facilities can be generated that has scheduled items that are past due or pending. For these cases, either the actual date of the item has not been entered into BIMS or the facility did not meet the due date. This report allows staff to see what must be completed in the coming months. Central office staff should generate these lists every quarter and send them to the regions. *Note: The regions also have the ability to access these reports and use them in the SOC oversight.*

**APPENDIX 5**

**SOC Pre-Application Certification**

**Special Order by Consent Pre-Application Certification:**

On \_\_\_\_\_, DWQ regional office staff met with  
*(pre-application meeting date)*

\_\_\_\_\_ to discuss the needs  
*(facility name / permit number)*

and merits of applying for a Special Order by Consent (SOC). Based on the information presented during this meeting and the facility's non-compliant status with permit conditions and/or other state rules and regulations, I support this facility's SOC application submittal.

\_\_\_\_\_  
Signature of Regional Office Supervisor

Date \_\_\_\_\_

\_\_\_\_\_  
DWQ Regional Office

THIS COMPLETED FORM MUST ACCOMPANY THE SOC APPLICATION PACKAGE. FAILURE TO DO SO COULD DELAY THE SOC APPLICATION PROCESS, AND MAY RESULT IN THE SOC APPLICATION BEING RETURNED TO THE APPLICANT AS INCOMPLETE.

APPENDIX 6

Request Form for In-Stream Assessment for 67B Analysis

Facility \_\_\_\_\_ Subbasin \_\_\_\_\_

Design Flow \_\_\_\_\_ Receiving Stream \_\_\_\_\_

County \_\_\_\_\_ Regional Office \_\_\_\_\_

Background Information:

- A. Why is SOC needed? (Facility is out of compliance with which effluent limits?)
B. Monthly Average Wasteflow Prior to SOC request? \_\_\_\_\_ MGD (Provide 12-month Average Flow)
C. Flows lost from plant (facilities that have gone off line) \_\_\_\_\_ MGD
D. Current SOC Request Flow: \_\_\_\_\_ MGD
E. Please attach the past twelve months of compliance data for all permitted parameters.

Current SOC Request:

- A. Request is for domestic or industrial wasteflow? If it is a combination, please specify percentages.
B. The Regional Office proposes the following SOC limits:

Table with 3 columns: Parameter Name, Blank Line, Unit. Rows include BOD5 (mg/l), NH3-N (mg/l), DO (mg/l), TSS (mg/l), Fecal Coliform (#/100 ml), pH (SU), and Other parameters.

- C. Provide the justification for these SOC limits.



**APPENDIX 7**

**WQ (NO ADDITIONAL FLOW) SOC EXAMPLE**

NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF *COUNTY NAME*

IN THE MATTER OF )  
NORTH CAROLINA ) SPECIAL ORDER BY CONSENT  
NPDES PERMIT NO. NC00XXXXX ) EMC SOC WQ NO. S##-###  
)  
HELD BY )  
*NPDES PERMITTEE* )

Pursuant to provisions of North Carolina General Statutes (G.S.) 143-215.2 and 143-215.67, this Special Order by Consent is entered into by *NPDES PERMITTEE*, hereinafter referred to as *NPDES PERMITTEE*, and the North Carolina Environmental Management Commission, an agency of the State of North Carolina created by G.S. 143B-282, and hereinafter referred to as the Commission:

1. *NPDES PERMITTEE* and the Commission hereby stipulate the following:
  - a. *NPDES PERMITTEE* holds North Carolina NPDES permit number NC00XXXXX for operation of an existing wastewater treatment works and for making an outlet therefrom for treated wastewater to *RECEIVING STREAM*, Class *XXXX* waters of this State in the *RIVER BASIN NAME*, but is unable to consistently comply with the final effluent limits for *EFFLUENT PARAMETER NAMES* as set forth in NPDES permit NC00XXXXX. Compliance will require preparation and implementation of plans and specifications for construction and operation of additional treatment works and upgrades.
  - b. Noncompliance with final effluent limits constitutes causing and contributing to pollution of the waters of this State named above, and *NPDES PERMITTEE* is within the jurisdiction of the Commission as set forth in G.S. Chapter 143, Article 21.
  - c. *NPDES PERMITTEE* has secured financing for planning, designing, and constructing a new or improved wastewater treatment and disposal system which, once constructed and operated, will be sufficient to adequately convey and treat wastewater presently being discharged, to such an extent that *NPDES PERMITTEE* will be able to comply with final effluent limits.
  - d. Since this Special Order is by consent, neither party will file a petition for a contested case or for judicial review concerning its terms.
2. *NPDES PERMITTEE*, desiring to comply with the permit identified in paragraph 1(a) above, hereby agrees to do the following:

- a. As settlement of all alleged violations of NPDES permit number NC00XXXXX prior to entering into this Special Order by Consent, *NPDES PERMITTEE* agrees to an up-front penalty in the amount of \$XXXXX. A certified check in the amount of \$XXXXX must be made payable to the Department of Environment and Natural Resources and forwarded to the Director of DWQ at 1617 Mail Service Center, Raleigh, North Carolina 27699-1617 by no later than fifteen (15) days following the date on which this Order is approved and executed by the Commission and received by *NPDES PERMITTEE*.
- b. Undertake the following activities in accordance with the indicated time schedule:
- 1) Upon receipt of the required DWQ permit(s), but no later than **MONTH DAY, YEAR**, begin construction.
  - 2) On or before **MONTH DAY, YEAR**, complete construction of the upgrades to the wastewater treatment plant and submit a certification of completion (Engineer's Certification) from a professional engineer verifying that the construction has been completed.
  - 3) On or before **MONTH DAY, YEAR**, comply with final effluent limits.
- c. *NPDES PERMITTEE* will submit quarterly progress reports detailing the work and activities undertaken and completed on the upgrades to the wastewater treatment plant. The reports are to be submitted as follows: one copy must be mailed to the *REGIONAL OFFICE NAME* Regional Supervisor, Division of Water Quality / Surface Water Protection Section, ##### Mail Service Center, Raleigh, NC *ZIP CODE NUMBER*, and one copy must be mailed to the Point Source Branch / NPDES Program, Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699-1617. **The quarterly reports are due in each respective office no later than the thirtieth (30th) day of January, April, July, and October for the duration of this Order.**
- d. *NPDES PERMITTEE* will comply with all terms and conditions of the permit except those effluent limits identified in paragraph 1(a) above. See Attachment A for all current monitoring requirements and effluent limits. *NPDES PERMITTEE* may also be required to monitor for other parameters, as deemed necessary by the Director, in future permits or administrative letters. During the time in which this Special Order by Consent is effective, *NPDES PERMITTEE* shall comply with the interim effluent limits for *EFFLUENT PARAMETERS MODIFIED* as listed in the table below.

**Under this Special Order by Consent, ONLY the parameters listed below have been modified from the most current NPDES Permit in effect for outfall 001.**

		Permit Limits		Modified Limits (SOC)	
Parameters	Unit	Monthly Avg.	Daily Max.	Monthly Avg.	Daily Max.
<i>EFFLUENT PARAMETER NAMES</i>	mg/L	<i>PERMIT LIMITS</i>	<i>PERMIT LIMITS</i>	<i>MODIFIED LIMITS</i>	<i>MODIFIED LIMITS</i>

- e. No later than fourteen (14) calendar days after any date identified for accomplishment of any activity listed in paragraph 2(b) above, submit to the Director of DWQ **written notice** of compliance (including the date compliance was achieved along with supporting documentation if applicable) or noncompliance therewith. In the case of noncompliance, the notice shall include a statement of the reason(s) for noncompliance, remedial

action(s) taken, and a statement identifying the extent to which subsequent dates or times for accomplishment of listed activities may be affected.

- f. *NPDES PERMITTEE* will continue to operate the wastewater treatment plant as best as possible to prevent/minimize any adverse impacts to the surface waters.
3. *NPDES PERMITTEE* agrees that unless excused under paragraph four (4), *NPDES PERMITTEE* will pay the Director of DWQ, by check payable to the North Carolina Department of Environment and Natural Resources, stipulated penalties according to the following schedule for failure to meet the deadlines set out in paragraphs 2(b), 2(c), and 2(e).

Failure to meet a schedule date; \$500 per day (*FOR MINOR FACILITIES*) OR \$1,000 per day (*FOR MAJOR FACILITIES*).

Failure to comply with a modified effluent limit; \$1,000 for exceeding monthly average limit; \$500 for exceeding daily maximum or weekly average limits.

Monitoring frequency violations for modified parameters (except toxicity); \$100 per omitted value per parameter.

Failure to submit progress reports; \$500 (*FOR MINORS*) OR \$1,000 (*FOR MAJORS*) for the first violation; penalty doubles with each subsequent assessment for late reports.

Failure to achieve compliance with final effluent limits; \$5,000 (single penalty).

4. *NPDES PERMITTEE* and the Commission agree that the stipulated penalties are not due if *NPDES PERMITTEE* satisfies DWQ that noncompliance was caused solely by:

- a. An act of God;
- b. An act of war;
- c. An intentional act or omission of a third party, **but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the permittee;**
- d. An extraordinary event beyond the permittee's control. **Contractor delays or failure to obtain funding will not be considered as events beyond the permittee's control;** or
- e. Any combination of the above causes.

Failure within thirty (30) days of receipt of written demand to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) days has elapsed.

5. Noncompliance with the terms of this Special Order by Consent is subject to enforcement action in addition to the above stipulations, including injunctive relief pursuant to G.S. 143-215.6.C.
  
6. This Special Order by Consent and any terms or conditions contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms, conditions, and limits contained therein issued in connection with NPDES permit number NC00XXXXX. In the event of an NPDES permit modification or renewal, any effluent limit or monitoring requirements contained therein shall supersede those contained in Attachment A of this Special Order by Consent, except as modified and contained in paragraph 2(d) above.
  
7. This Special Order by Consent may be amended provided *NPDES PERMITTEE* has made good faith efforts to secure funding, complete all construction and achieve compliance within the dates specified.
  
8. During the term of this Special Order by Consent, *NPDES PERMITTEE* will not be permitted to accept additional wastewater from any domestic, industrial, or commercial sources.
  
9. Failure to meet the scheduled date identified in paragraph 2(a) may terminate this Special Order by Consent and require *NPDES PERMITTEE* to comply with the terms and conditions contained in the permit identified in paragraph 1(a).
  
10. ***NPDES PERMITTEE, upon signature of this Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.***

This Special Order by Consent shall expire on ***MONTH DAY, YEAR (TYPICALLY 90-DAYS AFTER THE ACHIEVE FINAL COMPLIANCE DATE).***

For *NPDES PERMITTEE*:

\_\_\_\_\_  
Print Name of Signing Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

For the North Carolina Environmental Management Commission:

\_\_\_\_\_  
Chair of the Commission

\_\_\_\_\_  
Date

**APPENDIX 8**

**67B (ADDITIONAL FLOW) SOC EXAMPLE**

NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION

COUNTY OF *COUNTY NAME*

IN THE MATTER OF	)	
NORTH CAROLINA	)	SPECIAL ORDER BY CONSENT
NPDES PERMIT NO. NC00XXXXX	)	EMC SOC WQ NO. S##-###
	)	
HELD BY	)	
<i>NPDES PERMITTEE</i>	)	

Pursuant to provisions of North Carolina General Statutes (G.S.) 143-215.2 and 143-215.67, this Special Order by Consent is entered into by *NPDES PERMITTEE*, hereinafter referred to as *NPDES PERMITTEE*, and the North Carolina Environmental Management Commission, an agency of the State of North Carolina created by G.S. 143B-282, and hereinafter referred to as the Commission:

1. *NPDES PERMITTEE* and the Commission hereby stipulate the following:
  - a. *NPDES PERMITTEE* holds North Carolina NPDES permit number NC00XXXXX for operation of an existing wastewater treatment works and for making an outlet therefrom for treated wastewater to *RECEIVING STREAM*, Class *XXXX* waters of this State in the *RIVER BASIN NAME*, but is unable to consistently comply with the final effluent limits for *EFFLUENT PARAMETER NAMES* as set forth in NPDES permit NC00XXXXX. Compliance will require preparation and implementation of plans and specifications for construction and operation of additional treatment works and upgrades.
  - b. Noncompliance with final effluent limits constitutes causing and contributing to pollution of the waters of this State named above, and *NPDES PERMITTEE* is within the jurisdiction of the Commission as set forth in G.S. Chapter 143, Article 21.
  - c. *NPDES PERMITTEE* has secured financing for planning, designing, and constructing a new or improved wastewater treatment and disposal system which, once constructed and operated, will be sufficient to adequately convey and treat wastewater presently being discharged, to such an extent that *NPDES PERMITTEE* will be able to comply with final effluent limits.
  - d. Since this Special Order is by consent, neither party will file a petition for a contested case or for judicial review concerning its terms.
  - e. That *NPDES PERMITTEE* desires to allow the discharge of XX,XXX gpd of additional wastewater to the treatment works, and that the discharge of such additional wastewater

will not result in any significant degradation of the quality of any waters. (See item 6 below).

2. *NPDES PERMITTEE*, desiring to comply with the permit identified in paragraph 1(a) above, hereby agrees to do the following:
  - a. As settlement of all alleged violations of NPDES permit number NC00XXXXX prior to entering into this Special Order by Consent, *NPDES PERMITTEE* agrees to an up-front penalty in the amount of \$XXXXX. A certified check in the amount of \$XXXXX must be made payable to the Department of Environment and Natural Resources and forwarded to the Director of DWQ at 1617 Mail Service Center, Raleigh, North Carolina 27699-1617 by no later than fifteen (15) days following the date on which this Order is approved and executed by the Commission and received by *NPDES PERMITTEE*.
  - b. Undertake the following activities in accordance with the indicated time schedule:
    - 1) Upon receipt of the required DWQ permit(s), but no later than **MONTH DAY, YEAR**, begin construction.
    - 2) On or before **MONTH DAY, YEAR**, complete construction of the upgrades to the wastewater treatment plant and submit a certification of completion (Engineer's Certification) from a professional engineer verifying that the construction has been completed.
    - 3) On or before **MONTH DAY, YEAR**, comply with final effluent limits.
  - c. *NPDES PERMITTEE* will submit quarterly progress reports detailing the work and activities undertaken and completed on the upgrades to the wastewater treatment plant. The reports are to be submitted as follows: one copy must be mailed to the *REGIONAL OFFICE NAME* Regional Supervisor, Division of Water Quality / Surface Water Protection Section, ##### Mail Service Center, Raleigh, NC *ZIP CODE NUMBER*, and one copy must be mailed to the Point Source Branch / NPDES Program, Division of Water Quality, 1617 Mail Service Center, Raleigh, NC 27699-1617. **The quarterly reports are due in each respective office no later than the thirtieth (30th) day of January, April, July, and October for the duration of this Order.**
  - d. *NPDES PERMITTEE* will comply with all terms and conditions of the permit except those effluent limits identified in paragraph 1(a) above. See Attachment A for all current monitoring requirements and effluent limits. *NPDES PERMITTEE* may also be required to monitor for other parameters, as deemed necessary by the Director, in future permits or administrative letters. During the time in which this Special Order by Consent is effective, *NPDES PERMITTEE* shall comply with the interim effluent limits for *EFFLUENT PARAMETERS MODIFIED* as listed in the table below.

**Under this Special Order by Consent, ONLY the parameters listed below have been modified from the most current NPDES Permit in effect for outfall 001.**

		Permit Limits		Modified Limits (SOC)	
Parameters	Unit	Monthly Avg.	Daily Max.	Monthly Avg.	Daily Max.
<i>EFFLUENT PARAMETER NAMES</i>	mg/L	<i>PERMIT LIMITS</i>	<i>PERMIT LIMITS</i>	<b><i>MODIFIED LIMITS</i></b>	<b><i>MODIFIED LIMITS</i></b>

- e. No later than fourteen (14) calendar days after any date identified for accomplishment of any activity listed in paragraph 2(b) above, submit to the Director of DWQ **written notice** of compliance (including the date compliance was achieved along with supporting documentation if applicable) or noncompliance therewith. In the case of noncompliance, the notice shall include a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement identifying the extent to which subsequent dates or times for accomplishment of listed activities may be affected.
  - f. *NPDES PERMITTEE* will continue to operate the wastewater treatment plant as best as possible to prevent/minimize any adverse impacts to the surface waters.
3. *NPDES PERMITTEE* agrees that unless excused under paragraph four (4), *NPDES PERMITTEE* will pay the Director of DWQ, by check payable to the North Carolina Department of Environment and Natural Resources, stipulated penalties according to the following schedule for failure to meet the deadlines set out in paragraphs 2(b), 2(c), and 2(e).

Failure to meet a schedule date;	\$500 per day ( <i>FOR MINOR FACILITIES</i> ) OR \$1,000 per day ( <i>FOR MAJOR FACILITIES</i> ).
Failure to comply with a modified effluent limit;	\$1,000 for exceeding monthly average limit; \$500 for exceeding daily maximum or weekly average limits.
Monitoring frequency violations for modified parameters (except toxicity);	\$100 per omitted value per parameter.
Failure to submit progress reports;	\$500 ( <i>FOR MINORS</i> ) OR \$1,000 ( <i>FOR MAJORS</i> ) for the first violation; penalty doubles with each subsequent assessment for late reports.
Failure to achieve compliance with final effluent limits;	\$5,000 (single penalty).

4. *NPDES PERMITTEE* and the Commission agree that the stipulated penalties are not due if *NPDES PERMITTEE* satisfies DWQ that noncompliance was caused solely by:
- a. An act of God;
  - b. An act of war;
  - c. An intentional act or omission of a third party, **but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the permittee;**
  - d. An extraordinary event beyond the permittee's control. **Contractor delays or failure to obtain funding will not be considered as events beyond the permittee's control;** or
  - e. Any combination of the above causes.

Failure within thirty (30) days of receipt of written demand to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection

action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) days has elapsed.

- 5. Noncompliance with the terms of this Special Order by Consent is subject to enforcement action in addition to the above stipulations, including injunctive relief pursuant to G.S. 143-215.6.C.
- 6. In accordance with the provisions of G.S. 143-215.67(b) the Commission allows *NPDES PERMITTEE* to accept the additional waste specified below to its waste disposal system. The approval of additional flow will be in the form of a letter from the Director to *NPDES PERMITTEE*.

<u>Domestic Flow</u>	<u>Gallons per Day</u>
First phase of <i>NPDES PERMITTEE FACILITY</i> project	XX,XXX

- 7. This Special Order by Consent and any terms or conditions contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms, conditions, and limits contained therein issued in connection with NPDES permit number NC00XXXXX. In the event of an NPDES permit modification or renewal, any effluent limit or monitoring requirements contained therein shall supersede those contained in Attachment A of this Special Order by Consent, except as modified and contained in paragraph 2(d) above.
- 8. This Special Order by Consent may be amended provided *NPDES PERMITTEE* has made good faith efforts to secure funding, complete all construction and achieve compliance within the dates specified.
- 9. Failure to meet the scheduled date identified in paragraph 2(a) may terminate this Special Order by Consent and require *NPDES PERMITTEE* to comply with the terms and conditions contained in the permit identified in paragraph 1(a).
- 10. ***NPDES PERMITTEE, upon signature of this Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.***

This Special Order by Consent shall expire on ***MONTH DAY, YEAR (TYPICALLY 90-DAYS AFTER THE ACHIEVE FINAL COMPLIANCE DATE)***.

For *NPDES PERMITTEE*:

Print Name of Signing Official	Title
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Signature	Date
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For the North Carolina Environmental Management Commission:

Chair of the Commission	Date
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