

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0101 PURPOSE

(a) These Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).

(b) Rules and Statutes referenced in this Section may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations:

- Permits and Engineering Unit, Archdale Building
P.O. Box 29535, 512 N. Salisbury St.,
Raleigh, N.C. 27626-0535
- Raleigh Regional Office
3800 Barrett Dr.,
Raleigh, N.C. 27611
- Asheville Regional Office
59 Woodfin Pl.,
Asheville, N.C. 28802
- Mooresville Regional Office
919 N. Main St.,
Mooresville, N.C. 28115
- Fayetteville Regional Office
Wachovia Bldg. Suite 714,
Fayetteville, N.C. 28301
- Washington Regional Office
1424 Carolina Avenue,
Washington, N.C. 27889
- Wilmington Regional Office
127 Cardinal Drive Extension,
Wilmington, N.C. 28405-3845
- Winston-Salem Regional Office
8025 North Point Blvd.,
Winston-Salem, N.C. 27106

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1;
Eff. February 1, 1976;
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, 1984.

15A NCAC 02H .0102 SCOPE

These Rules apply to all persons:

- (1) discharging or proposing to discharge waste to the surface waters of the state; or
- (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (3) operate or propose to operate a treatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (4) discharging or proposing to discharge stormwater which results in water pollution.

This Rule does not apply to those persons who have obtained a permit from a local pretreatment control authority, authorized to issue such permits, and whose pretreatment program was approved in accordance with Section .0900 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);

*Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987; December 1, 1984.*

15A NCAC 02H .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
 - (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
 - (3) "Commission" means the Environmental Management Commission.
 - (4) "Committee" means the NPDES committee of the Environmental Management Commission.
 - (5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.
 - (6) "Department" means the Department of Environment and Natural Resources.
 - (7) "Director" means the Director of the Division of Water Quality, Department of Environment and Natural Resources or his designee.
 - (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
 - (9) "Division" means the Division of Water Quality, Department of Environment and Natural Resources.
 - (10) "EPA" means the United States Environmental Protection Agency.
 - (11) "Existing", with respect to implementing the NPDES permitting program, means:
 - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
 - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
 - (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.
 - (13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
 - (14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.
 - (15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
 - (16) "New", with respect to implementing the NPDES permitting program, means:
 - (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
 - (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
 - (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

- (17) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.
- (18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (22) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
- (23) "POTW" means Publicly Owned Treatment Works.
- (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.
- (26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- (30) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources.
- (31) "Stormwater" is defined in G.S. 143, Article 21.
- (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.
- (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.
- (34) "Trout farm" means a facility for the commercial production of trout.
- (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

*History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;*

Temporary Amendment Eff. May 11, 2001;
Temporary Amendment Expired on February 26, 2002;
Amended Eff. April 1, 2003.

15A NCAC 02H .0104 REQUIRED PERMITS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a);
Eff. February 1, 1976;
Amended Eff. December 1, 1984;
Repealed Eff. November 1, 1987.

15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources.

The State NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	All municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry.
Short Form A:	Any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial or process and commercial discharges except
EPA Forms 1 and 2-C:	cooling waters, cooling tower blowdown, and boiler blowdown.
EPA Forms 1 and 2F:	Discharges consisting entirely of stormwater associated with industrial activity.
EPA Forms 1 and 2D:	Discharges consisting of stormwater and non-stormwater.
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.

The Authorization to Construct and Notice of Intent application forms to be used will be supplied by the Division.

(b) Permit Fees.

- (1) Permit Application Processing Fees. For every application for new or renewed NPDES permits, Notice of Intent to be covered by a general permit or Authorization to Construct, a nonrefundable application processing fee in the amount stated in Subparagraph (b)(5) of this Rule shall be submitted at the time of application.
 - (A) Each permit or renewal application is incomplete until the processing fee is received.
 - (B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
 - (C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.
 - (D) An application processing fee of one hundred dollars (\$100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.
 - (E) A full processing fee will be charged for modifications other than those listed in Rule .0114(b) of this Section; this fee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for new applications/modifications.
 - (F) Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, according to the schedule in Subparagraph (b)(5) of this Rule.
 - (A) Collection of annual fees shall begin on the effective date of this Rule.
 - (B) Annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.

- (C) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
 - (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
 - (E) A person with multiple permits may have annual fees consolidated into one annual bill.
 - (F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.
 - (G) Permit Application Processing Fees and Annual Administering and Compliance Monitoring Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in Subparagraph (b)(5) of this Rule.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
 - (4) Failure to pay an annual fee within 30 days after being billed may cause the Division to initiate action to revoke the permit.
 - (5) Schedule of Fees:

Category	Permit Application Processing Fee		Annual Administering And Compliance Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance
>10,000,000 GPD				
Industrial	\$400.	\$400.	\$1500.	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.
1,000,001 - 10,000,000 GPD				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.
100,001 - 1,000,000 GPD				
Industrial	400.	250.	800.	600.
Domestic/Cooling Water	400.	250.	600.	450.
1,001 - 100,000 GPD				
Industrial	400.	200.	600.	450.
Domestic/Cooling Water	400.	200.	450.	300.
<=1,000 GPD and Single family dwelling				
	240.	240.	0	0
Stormwater - Municipal Separate				

Stormwater System	400.	400.	600.	450.
Industrial Activity	400.	400.	600.	450.
Stormwater				
General Permits				
Construction (Stormwater)	50.	50.	n/a	n/a
Domestic	240.	240.	n/a	n/a
Others	400.	400.	n/a	n/a
Authorization to Construct (Permitted Flow)				
>=100,001 GPD	200.	n/a	n/a	n/a
<=100,000 GPD	150.	n/a	n/a	n/a
<=1,000 GPD	100.	n/a	n/a	n/a

- (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars (\$7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per year.
- (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:
- (A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars (\$75.00);
- (B) Single family dwellings, forty dollars (\$40.00);
- (C) All other facilities, zero.
- (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.
- (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.
- (10) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section may pay the lower fees set in Subparagraph (b)(5) of this Rule for the appropriate general permit.
- (c) Applicants for new NPDES permits requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:
- (1) a description of the origin, type and flow of waste which is proposed to be discharged. Justification and a demonstration of need shall be provided for expected flow volumes. Flow shall be determined in accordance with 15A NCAC 2H .0219(1);
 - (2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;
 - (3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment

capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;

- (4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);
- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
- (6) special studies or modeling may be required in cases where the impacts of the discharge cannot be readily determined by the Division;
- (7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).

(d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the Director, or shall file in triplicate, an engineering proposal setting forth the information required in Paragraph (c) of this Rule.

(e) Applications for permit renewals shall be accomplished by filing the appropriate application form as listed in Paragraph (a) of this Rule, with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources, at least 180 days prior to expiration of a permit. Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and may be returned to the applicant.

(f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of Environmental Management.

(g) Applications for permits for new discharges which propose to discharge industrial process or domestic wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water to the surface waters shall file, in addition to the applications and supporting documents required in Paragraphs (a) and (b) of this Rule, an assessment which shall meet the requirements of 1 NCAC 25 .0502. Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.

(h) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.

(j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix D which are hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00).

History Note: Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); 143-215.3B;
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, 1988.

(a) Permit applications shall be filed with the Director, Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.

(d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) Permit applications filed with the Director shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;
- (2) in the case of a partnership or a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue separate permits for these activities:

- (1) filter backwash and draining associated with swimming pools;
- (2) filter backwash from raw water intake screening devices;
- (3) condensate from residential or commercial air conditioning units;
- (4) individual non-commercial vehicle washing operations;
- (5) flushing and hydrostatic testing water associated with utility distribution systems;
- (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
- (7) groundwaters generated by well construction or other construction activities;
- (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;
- (9) street wash water;
- (10) flows from fire fighting; and
- (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following specific conditions:
 - (A) the volume of discharge produced by the decontamination activity is too large to be contained on-site;
 - (B) the Division of Water Quality is informed prior to commencement of the discharge from the decontamination activity;
 - (C) overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity; and
 - (D) the discharge is not radiologically contaminated.

History Note: Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978; Temporary Amendment Eff. May 11, 2001; Temporary Amendment Expired on February 26, 2002; Amended Eff. April 1, 2003.

15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into

waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Division of Environmental Health, Department of Environment, Health, and Natural Resources, for review and written approval.

(b) The Director shall acknowledge receipt of a complete NPDES or Authorization to Construct application or, if not complete, may return the application to the applicant as incomplete or request the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

- (1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. On-site investigations will not be necessary for Authorization to Construct permits, activities covered under general permits and renewal of individual permits with no modifications.
- (2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the permit, it shall if necessary make the following additional determinations in writing:
 - (A) proposed effluent limitations for those pollutants proposed to be limited;
 - (B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft permit.

(d) In the case of permits for which notice of intent is given on forms as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with an explanation of the inadequacies.

History Note: Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c); Eff. February 1, 1976; Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, 1987.

15A NCAC 02H .0108 FACT SHEETS

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application which includes at least the following:
 - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
 - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
 - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required under Rule .0107 of this Section;
- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and
- (5) a more detailed description of the procedures for the formulation of final determinations than that given in a public notice including:
 - (A) the 30-day comment period required by Rule .0110 of this Section,
 - (B) procedures for requesting a public meeting and the nature thereof, and

- (C) any other procedures by which the public may participate in the formulation of the final determinations.
- (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987.*

15A NCAC 02H .0109 PUBLIC NOTICE

(a) Notice of Application

- (1) Public notice of each complete individual NPDES permit application and each general NPDES permit shall be circulated in the geographical areas of the proposed discharge by the Director at least 45 days prior to any proposed final action:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county; and
 - (B) by mailing the notice to all persons or agencies listed in Subsection (c) of this Rule.
- (2) The notice shall set forth at least the following:
 - (A) name, address, and phone number of the agency issuing the public notice;
 - (B) name and address of each applicant;
 - (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
 - (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
 - (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
 - (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
 - (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.
- (3) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and Authorizations to Construct shall not be required.

(b) Notice of Public Meeting

- (1) Notice of public meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the Director at least 30 days prior to the date of the meeting:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county;
 - (B) by mailing the notice to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
 - (C) by mailing the notice to any person or group upon request.
- (2) The notice of any public meeting shall include at least the following:
 - (A) name, address, and phone number of agency holding the public meeting;
 - (B) name and address of each applicant whose application will be considered at the meeting;
 - (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
 - (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
 - (E) information regarding the time and location for the meeting;

- (F) the purpose of the meeting;
- (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and
- (H) a brief description of the nature of the meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Environment, Health, and Natural Resources at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty-five dollars (\$25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice to the following for NPDES permits:

- (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;
- (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;
- (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;
- (5) North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health; and
- (6) Any other federal, state, or local agency upon request.

History Note: Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987; December 1, 1984.

15A NCAC 02H .0110 RESPONSE TO PUBLIC NOTICE

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(3); 143-215.3(a)(3); 143-215.3(a)(4);
Eff. February 1, 1976;
Repealed Eff. November 1, 1987.

15A NCAC 02H .0111 MEETINGS AND HEARINGS

(a) Public Meetings:

- (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public meeting with respect to NPDES permit applications. Any person who desires a public meeting on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public meeting shall indicate the interest of the party filing such request and the reasons why a meeting is warranted.
- (2) The Director is delegated authority to determine if a public meeting shall be held in accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such meeting for the Commission.
- (3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.

- (4) Any meeting brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.
- (b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5; 143-215.1(e);
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987.

15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS

- (a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to issue or deny, or, if a public meeting is held, within 90 days following the closing of the record of the meeting or in the case of an Authorization to Construct permit 90 days after the receipt of a complete application or, if a public meeting is held concerning the Authorization to Construct, within 90 days following the closing of the record of the meeting.
- (b) The Director is authorized to:
- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;
 - (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;
 - (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;
 - (4) suspend a permit pursuant to Rule .0114(a) of this Section;
 - (5) rescind a permit upon request by the permittee;
 - (6) deny a permit application:
 - (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
 - (B) for a discharge prohibited by G.S. 143-214.2(a),
 - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
 - (D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
 - (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.
- (c) 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 and regulations of all affected states.
- (d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall permits be issued for a period to exceed five years.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, 1984.

15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS

The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the Director will be required to obtain the permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. October 1, 1987.

15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for any of the following:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and
- (4) refusal of the permittee to permit the Director or his authorized representative upon presentation of credentials:
 - (A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,
 - (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
 - (C) to inspect any monitoring equipment or method required in the permit, or
 - (D) to sample any discharge of pollutants.
- (5) failure to pay the annual fee for administering and compliance monitoring.

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:

- (1) modifications of the monitoring program contained in the permit,
- (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,
- (3) a single modification of any compliance schedule not in excess of four months,
- (4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
- (5) modifications to include or amend pretreatment program requirements,
- (6) issuance of permits revoked for failure to pay the annual administering and compliance monitoring fee,
- (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps, and similar minor changes.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);
Eff. February 1, 1976;
Amended Eff. March 1, 1993; September 1, 1988; November 1, 1987.

15A NCAC 02H .0115 PUBLIC ACCESS

(a) All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets.

(b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take

steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.

(c) The Director shall:

- (1) provide facilities for the inspection of information relating to permit applications and permits,
- (2) ensure that the staff handle request for such inspections promptly,
- (3) ensure that copying machines or devices are available for a reasonable fee.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65; Eff. February 1, 1976; Amended Eff. March 1, 1993; October 1, 1987.

15A NCAC 02H .0116 EMERGENCY PROCEDURES

If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director shall so notify the Commission or the secretary who may exercise emergency powers pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), 143-215.6(c), or 143-215.3(a)(12).

History Note: Authority G.S. 143-215.3(a)(8); 143-215.13(d); 143-215.6(c); Eff. February 1, 1976; Amended Eff. December 1, 1984; November 1, 1978.

15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING

(a) Staff of the Department of Environment, Health, and Natural Resources are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 2B .0500.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7); 143-215.1(b)(1); 143-215.3(a)(9); 143-215.63; Eff. February 1, 1976; Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; November 1, 1978.

15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC 2B .0400 and the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies of the Clean Water Act may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00). That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.

History Note: Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. March 1, 1993; November 1, 1987.

15A NCAC 02H .0119 DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);
Eff. February 1, 1976;
Repealed Eff. December 1, 1984.

15A NCAC 02H .0120 LIMITATION ON DELEGATION

The Director is authorized to delegate any or all of the functions contained in this Section except the following:

- (1) denial of a permit application,
- (2) suspension of a permit,
- (3) revocation of a permit not requested by the permittee,
- (4) modification of a permit where initiated by the Division and which does not fall within the exceptions listed in Rule .0114(b) of this Section, or
- (5) determination of confidentiality.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. March 1, 1993.

15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS

(a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

(b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are applicable without a G.S. 143-215.1 permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;
Eff. December 1, 1976;
Amended Eff. December 1, 1984.

15A NCAC 02H .0122 CONCENTRATED ANIMAL FEEDING OPERATIONS

(See 15A NCAC 02T .1300)

15A NCAC 02H .0123 REQUIREMENTS: EVALUATING FEEDLOT PERMIT APPLICATIONS

(See 15A NCAC 02T .1300)

History Note: Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1); 143-215.3(a)(1)(4);
Eff. December 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; June 7, 1981;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0124 RELIABILITY

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will insure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

- (1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment; and
- (2) At least one of the following:
 - (a) dual or standby power supply on site, or
 - (b) approval by the Director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, or
 - (iii) can tolerate septic wastewater due to prolonged detention, and
 - (iv) would have de minimus impacts as a result of power failure, or
 - (c) a demonstration that the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;
- (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (6) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

History Note: Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);
 Eff. December 1, 1984;
 Amended Eff. March 1, 1993; October 1, 1987.

15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING

(a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated. In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

(b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary to protect water quality standards, after reclamation for all peat mining operations that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses.

Estuarine nursery areas are areas that function as important breeding or development grounds for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- (1) all designated Primary Nursery Areas,
- (2) all designated Secondary Nursery Areas,
- (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries, and
- (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or the Wildlife Resources Commission.

(c) Drainage:

- (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed towards appropriate freshwater bodies if possible.
- (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas or other areas determined by the Commission to require this protection, the project must be designed such that the total annual water released from the site would not exceed that expected from the site covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the peak flows from the site shall be controlled by the use of basins or other management techniques which moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed project site without structures or features imposed by human agency intended to facilitate removal of surface or subsurface water. In modelling or other analysis required by this Rule, major canals existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that accurate evaluation of "undrained" conditions is not practicable. Water management systems must be designed to meet these criteria utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The frequency-duration distribution for flows leaving the site during and after mining should as much as possible match the distribution that would occur if the site were undrained and covered with mature natural vegetation.
- (3) An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years. Reduction in runoff volumes must occur at a rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those expected under conditions existing at the time of permit issuance.

(d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c) of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively eutrophic.

(e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the various components for the water control system, including canals and settling basins, must be provided. Adequate sediment controls must be provided during maintenance and expansion of canals and water control structures.

(f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases of the project. Any substances which may be discharged during some phase of the project must be evaluated as part of the application and adequately controlled to comply with the water quality standards and to protect the uses of the waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to assure reliable control of pollution from on-site storage piles.

(g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

- (1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;
- (2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;
- (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- (4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;
- (5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, as existing on July 1, 1985. Copies may be obtained from the Director, Division of Environmental Management, Raleigh. Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this

condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

- (1) is manmade and is utilized primarily for water management and water pollution control;
- (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;
- (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);
- (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries. The following factors can be used as guidance in determining the outlet point:

- (1) The outlet point must be entirely on the property of the permit applicant;
- (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
 - (A) without removing any established uses of the waters including navigation, fishing, and wildlife, and
 - (B) without adversely affecting drainage by other landowners;
- (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;
- (4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

History Note: Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);
Eff. September 1, 1986.

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs), subject to NPDES permitting, shall be issued NPDES permits for stormwater discharges to surface waters, in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0154, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. These federal regulations can be accessed on the world wide web at <http://www.gpoaccess.gov/cfr/index.html>. State regulations can be accessed on the world wide web at <http://www.ncoah.com/rules>.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. November 1, 1986;
Amended Eff. August 3, 1992;
Temporary Amendment Eff. November 1, 2002;

*Temporary Amendment returned to Agency by Rules Review Commission on January 22, 2004;
Amended Eff. July 3, 2012.*

15A NCAC 02H .0127 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities;
- (7) tourist gem mines;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Division of Environmental Health, Department of Environment, Health, and Natural Resources.

(c) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

(e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

(i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the discharge is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Division Rules; or
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (6) effluent limitations are promulgated for the point sources covered by the general permit;
- (7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
- (8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

History Note: Authority G.S. 143-215(1); 143-215.3(a)(1);
Eff. October 1, 1987;
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988.

15A NCAC 02H .0128	GENERAL PERMIT FOR COOLING WATERS
15A NCAC 02H .0129	GENERAL PERMIT FOR MINE DEWATERING FACILITIES
15A NCAC 02H .0130	GENERAL PERMIT FOR WATER FILTRATION FACILITIES
15A NCAC 02H .0131	GENERAL PERMIT/SWIMMING POOL FILTER BACKWASH FACILITIES
15A NCAC 02H .0132	GENERAL PERMIT FOR SEAFOOD PACKING FACILITIES
15A NCAC 02H .0133	GENERAL PERMIT/OIL STORAGE FACILITIES DISC/WS-III WATERS
15A NCAC 02H .0134	GENERAL PERMIT OTHER THAN WS-I: WS-II: OR WS-III
15A NCAC 02H .0135	GENERAL PERMIT FOR SAND DREDGES
15A NCAC 02H .0136	GENERAL PERMIT FOR TROUT FARMS
15A NCAC 02H .0137	GENERAL PERMIT FOR AQUIFER RESTORATIONS

History Note: Authority G.S. 143-215; 143-215(1); 143-215(3); 143-215.1; 143-215.3;
Eff. October 1, 1987;
Amended Eff. August 1, 1988;
Repealed Eff. August 1, 1991.

15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS

(a) Required. After an NPDES permit has been issued by the Division of Environmental Management in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and an Authorization to Construct has been issued to the permittee by the Division of Environmental Management. If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application.

- (1) Application for Authorizations to Construct must be made in triplicate on official forms completely filled out, where applicable, and fully executed. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization from the permittee.
- (2) Required sets of plans and specifications:

- (A) regular projects -- five sets of detailed plans and specifications,
 - (B) federal and state grants/loan projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;
 - (3) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.
 - (4) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
 - (5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, Mineral, and Land Resources or their designee, documentation shall be provided verifying that the applicant has developed and submitted to the governing agency the required Plan.
 - (6) A 110 volt power source and a potable water supply, equipped with backflow prevention, must be available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Section Chief.
 - (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information must be provided as specified in Rule 2H .0205 of this Subchapter.
 - (8) A residuals management plan must be submitted for all wastewater treatment systems that generate residuals and must include the following:
 - (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars (\$36.00).
 - (B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.
 - (C) No authorization to construct will be issued unless the application package includes a commitment from a DEM approved residual disposal/utilization site for the acceptance of the residual and which demonstrates that the DEM approved site has adequate capacity to accept the residuals.
 - (9) A construction sequence plan must be submitted with applications for an Authorization to Construct for modification of existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.
- (c) Fees for Authorization to Construct Permits
- (1) For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.
 - (2) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be submitted.

- (3) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars (\$100.00) must be submitted.

History Note: Authority G.S. 143-215.1(c)(1);
Eff. October 1, 1987;
Amended Eff. August 1, 2012 (see S.L. 2012-14, 3 s.1.(f)); March 1, 1993; August 3, 1992.

15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS

All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and comply with the minimum design requirements specified in Rule 2H .0219 of this Subchapter. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

- (1) the plans and specifications are for domestic waste from a single family dwelling with flows of 1000 gallons per day or less, and
- (2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and
- (3) the effluent limitations are for secondary treatment.

History Note: Authority G.S. 143-215.1(c)(1);
Eff. October 1, 1987.

15A NCAC 02H .0140 CERTIFICATION OF COMPLETION

Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification must be received from a professional engineer certifying that the treatment works or disposal system has been installed in accordance with the approved plans and specifications. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal system was designed by a homeowner rather than a professional engineer, either the permittee or a professional engineer must submit this certification.

History Note: Authority G.S. 143-215.1(c)(1);
Eff. October 1, 1987.

15A NCAC 02H .0141 OPERATIONAL AGREEMENTS

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of Environmental Management. The requirement for assurance of financial solvency will be made on a case by case determination.

History Note: Authority G.S. 143-215.1(d1);
Eff. October 1, 1987.

15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.

(b) In this, the Director shall:

- (1) Ensure the fiscal integrity of the fund;
- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);
- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and
- (7) Provide a quarterly accounting of the fund to the Commission.

History Note: Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);
Eff. August 1, 1988.

15A NCAC 02H .0143 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0144 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0145 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0146 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0147 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0148 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0149 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .0150 DEFINITIONS

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

- (1) The definitions set out in 15A NCAC 02H .1002 (Definitions).
- (2) "Division" means the Division of Water Quality in the Department.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (5) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:

- (a) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with Paragraphs (d) and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).
 - (b) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. § 1531, et seq.), as amended.
 - (c) Waters for which the designated use, as described by the classification system set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. §§ 1313.
- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. July 3, 2012.

15A NCAC 02H .0151 DESIGNATION AND PETITION PROCESS

(a) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this Paragraph.

- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32.
- (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below:
 - (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 - (i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact; or
 - (ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
 - (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.
 - (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission

shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:

- (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years;
 - (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years;
 - (iii) The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years;
 - (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality; or
 - (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.
- (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (b) Petition Process. A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:
- (1) Connected discharge petition. An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).
 - (2) Adverse impact petition. Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:
 - (A) Petition review. The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain

a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

- (i) The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation;
- (ii) The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters;
- (iii) The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.

(B) Types of evidence for required showing. Petitioners may make the required showing by providing to the Commission the following information:

- (i) Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities;
- (ii) Scientific or technical literature that supports the sampling methods;
- (iii) Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;
- (iv) A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality;
- (v) For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded;
- (vi) For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.

(C) Water quality protection program offset. If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.

(3) Petition administration. The Commission shall process petitions in the following manner:

- (A) The Commission shall only accept petitions submitted on Department forms.
- (B) A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.
- (C) The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.
- (D) The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal

separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.

- (E) The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.
- (F) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.
- (G) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.
 - (i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.
 - (ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.
- (H) The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(c) Exemption. A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

(d) Waiver. The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. July 3, 2012.

15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS

(a) Development in Unincorporated Areas of Counties.

- (1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule .0154 of this Section beginning 1 July 2007 if the development is located in:
 - (A) An area that is designated as an urbanized area under the most recent federal decennial census.
 - (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
 - (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
 - (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
 - (C) An area delineated pursuant to Item (2) of this Paragraph.
 - (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Rule .0151(a) of this Section; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Rule .0151(b) of this Section; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this Paragraph, the stormwater programs administered by the Division are:
 - (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (v) High Quality Waters (HQW) – 15A NCAC 02H .1006;
 - (vi) Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007;
 - (vii) The Coastal Stormwater Program – 15A NCAC 02H .1005;
 - (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
 - (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
 - (E) Subject to Subparagraph (4) of this Paragraph, a county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.
- (2) Delineation Process. The Commission shall delineate regulated coverage areas as provided in Subparagraphs (2)(A) through (F) below:
 - (A) Schedule. The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Potential candidate coverage areas. A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule .0151(a) of this Section that:
 - (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and

- (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
 - (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Part (2)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
 - (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
 - (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
 - (i) Adversely impacts water quality; or
 - (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
 - (F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.
 - (3) Except as provided in this Paragraph and 15A NCAC 02H .1016(d), the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).
 - (4) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004 is not a county under Part (1)(E) of this Paragraph and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.
- (b) Development in Non-Phase II Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (1)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule .0151(a) of this Section of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220; Eff. July 3, 2012; Amended Eff. July 1, 2013.

15A NCAC 02H .0153 PROGRAM IMPLEMENTATION

(a) Permit Standards. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) shall be conducted as provided in Rule .0154(a) of this Section. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

(b) Implementation Schedule. The requirements of this act shall be implemented as follows:

- (1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b), and .0152 of this Section.
- (2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.
- (3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.
- (4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

(c) Federal and State Projects. The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular project, then the project is subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit. The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) shall require a permittee to meet the standards set out in Rule .0154(a) of this Section but shall not impose any requirement on the permittee that exceeds the standards set out in Rule .0154(a) of this Section. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. July 3, 2012.

15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES

(a) Requirements for Post-Construction Practices.

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:
 - (A) Low Density Option. A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from

the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

- (B) High Density Option. A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of 15A NCAC 2H .1005. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:
- (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
 - (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
 - (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.
- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.
- (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
- (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
- (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
 - (C) Meet the requirements of 15A NCAC 2H .1005(a)(2).
- (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

- (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
- (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
 - (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
- (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
- (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (E) Freshwater High Quality Waters (HQW) – 15A NCAC 02H .1006;
 - (F) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007;
 - (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258; or
 - (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
- (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5).
- (11) Nothing in this Paragraph shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices. The post-construction practices required by Paragraph (a) of this Rule shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:
 - (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
 - (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
 - (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a) that shows:
 - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
 - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.

- (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a); or
 - (E) A vested right to the development pursuant to common law.
 - (2) Redevelopment as defined in Rule .0150 of this Section.
- (c) Exceptions. The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:
- (1) An exception may be granted if the application meets all of the following criteria:
 - (A) Unnecessary hardships would result from strict application of the act;
 - (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;
 - (C) The hardships did not result from actions taken by the petitioner; and
 - (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
 - (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
 - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
 - (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
 - (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
 - (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. July 3, 2012.

SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

- 15A NCAC 02H .0201 PURPOSE**
(See 15A NCAC 02T .0101)
- 15A NCAC 02H .0202 SCOPE**
(See 15A NCAC 02T .0102)
- 15A NCAC 02H .0203 DEFINITION OF TERMS**
(See 15A NCAC 02T .0103)
- 15A NCAC 02H .0204 ACTIVITIES WHICH REQUIRE A PERMIT**
(See 15A NCAC 02T .0104)
- 15A NCAC 02H .0205 APPLICATION: FEES: SUPPORTING INFORMATION: REQUIREMENTS**
(See 15A NCAC 02T .0105)

15A NCAC 02H .0206 SUBMISSION OF PERMIT APPLICATIONS
(See 15A NCAC 02T .0106)

History Note: Authority G.S. 130A-335; 143-213; 143-215.1; 143-215.3(a); 143-215.3(a)(I); 143-215.3B(b);
Eff. February 1, 1976;
Amended Eff. September 1, 1995; February 1, 1993; October 1, 1990; August 1, 1988; November 1, 1987;
October 1, 1987; February 1, 1986; January 1, 1984;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0207 SUBMISSION OF PERMIT APPLICATION

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(d); 143-215.3(a)(4);
Eff. February 1, 1976;
Repealed Eff. February 1, 1986.

15A NCAC 02H .0208 STAFF REVIEW AND PERMIT PREPARATIONS
(See 15A NCAC 02T .0107)

15A NCAC 02H .0209 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION
(See 15A NCAC 02T .0108)

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.1(d); 143-215.3(a)(1); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. February 1, 1993; August 1, 1988; October 1, 1987; February 1, 1986;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0210 NOTIFICATION OF APPLICANTS

History Note: Authority G.S. 143-215.1(a); 143-215.3(a)(4);
Eff. February 1, 1976;
Repealed Eff. October 1, 1987.

15A NCAC 02H .0211 PERMIT RENEWALS
(See 15A NCAC 02T .0109)

History Note: Authority G.S. 143-215.3(e)(I);
Eff. February 1, 1976;
Amended Eff. February 1, 1993; October 1, 1990; October 1, 1987; January 1, 1984;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0212 ADMINISTRATIVE HEARINGS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.4; 143-215.1(e);
Eff. February 1, 1976;
Amended Eff. October 1, 1987;
Repealed Eff. August 1, 1988.

15A NCAC 02H .0213 MODIFICATION AND REVOCATION OF PERMITS
(See 15A NCAC 02T .0110)

History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(b)(2);
Eff. February 1, 1976;
Amended Eff. February 1, 1993; August 1, 1988; October 1, 1987; November 1, 1978;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0214 INVESTIGATIONS: MONITORING AND REPORTING

History Note: Authority G.S. 143-215.3(a); 143-215.1(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1978;
Repealed Eff. October 1, 1987.

15A NCAC 02H .0215 DELEGATION OF AUTHORITY

(See 15A NCAC 02T .0112)

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. February 1, 1993; October 1, 1987; February 1, 1986;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0216 LIMITATION ON DELEGATION

History Note: Authority G.S. 143-215.3(a)(1); 143-215.9(d); 143-215.3(a)(4);
Eff. February 1, 1976;
Repealed Eff. February 1, 1986.

15A NCAC 02H .0217 PERMITTING BY REGULATION

(See 15A NCAC 02T .0113)

History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.3(a),(d);
Eff. February 1, 1976;
Amended Eff. February 1, 1993; December 1, 1984;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0218 LOCAL PROGRAMS FOR SEWER SYSTEMS

(See 15A NCAC 02T .0306)

History Note: Authority G.S. 143-215.1; 143-215.3(a)(1);
Eff. February 1, 1986;
Amended Eff. February 1, 1993; October 1, 1987;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0219 MINIMUM DESIGN CRITERIA

15A NCAC 02H .0220 CERTIFICATION OF COMPLETION (SEE 15A NCAC 02T .0116)

15A NCAC 02H .0221 OPERATIONAL AGREEMENTS (SEE 15A NCAC 02T .0115)

History Note: Authority G.S. 143-215.1; 143-215.1(d)(1); 143-215.3(a); 143-215.3(a)(1); 143-215.3B(c); 143-215.3B(e);
Eff. October 1, 1987;
Amended Eff. February 1, 1993; August 1, 1988;
RRC Objection Eff. April 18, 1996 due to lack of statutory authority (.0219);

Amended Eff. June 1, 1996;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0222 THE WASTEWATER TREATMENT WORKS EMERGENCY FUND

History Note: Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);
Eff. August 1, 1988;
Amended Eff. February 1, 1993;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0223 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES
(See 15A NCAC 02T .0118)

15A NCAC 02H .0224 TREATMENT FACILITY OPERATION AND MAINTENANCE
(See 15A NCAC 02T .0117)

History Note: Authority G.S. 143-215.3;
Eff. February 1, 1993;
Temporary Amendment Eff. September 13, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (.0223);
Amended Eff. February 1, 1994;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0225 CONDITIONS FOR ISSUING GENERAL PERMITS
(See 15A NCAC 02T .0111)

History Note: Authority G.S. 143-215.1; 143-215.3(a)(l); 143-215.10C;
Temporary Adoption Eff. November 8, 1996;
Temporary Adoption Eff. May 8, 1997;
Eff. August 1, 1998;
Repealed Eff. September 1, 2006.

15A NCAC 02H .0226 INNOVATIVE ANIMAL WASTE OPERATION PERMITS FOR SWINE OPERATIONS

History Note: Authority G.S. 143-215.1; 143-215.10C; Clean Water Responsibility And Environmentally Sound Policy Act, S.L. 1997 c. 458;
Temporary Adoption Eff. August 21, 1998;
Temporary Adoption Expired May 11, 1999.

15A NCAC 02H .0227 SYSTEM-WIDE COLLECTION SYSTEM PERMITTING
(See 15A NCAC 02T .0400)

History Note: Authority G.S. 143-215.1(a); 143-215.3(a),(d); NC Clean Water Act of 1999; S.L. 1999 c. 329;
Temporary Adoption Eff. March 1, 2000;
Eff. April 1, 2001;
Repealed Eff. September 1, 2006.

SECTION .0300 - SEPTIC TANK SYSTEMS

15A NCAC 02H .0301 SCOPE

15A NCAC 02H .0302 TECHNICAL GUIDE FOR EVALUATION OF SOIL ABSORPTION SITES

15A NCAC 02H .0303 INTERPRETATION AND TECHNICAL ASSISTANCE

15A NCAC 02H .0304 TABLE NO. I
15A NCAC 02H .0305 TABLE NO. II
15A NCAC 02H .0306 APPLICABILITY: VIOLATIONS

History Note: Authority G.S. 130A-160; 130A-335; 143-215.1; 143-215.6;
Eff. February 1, 1976;
Amended Eff. July 1, 1988; February 1, 1986;
Repealed Eff. April 1, 1994.

SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL

15A NCAC 02H .0401 STATEMENT OF POLICY

It is hereby declared to be the policy of the Environmental Management Commission that all wastewater generated in the State of North Carolina shall be treated to such an extent as to insure the compliance with water quality standards promulgated by the Commission. It is further the policy of the Commission that regional and area-wide wastewater collection and treatment facilities shall be promoted to the fullest practicable extent. The Commission recognizes, however, that development of area-wide and regional sewerage systems is not always in keeping with the demands for growth within the areas and that interim regulations are necessary to insure that water quality standards are not violated. In keeping with this policy, the Commission adopts these Regulations of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976.

15A NCAC 02H .0402 APPLICABILITY

These Regulations shall apply to treatment and disposal of waste from all installations located within the coastal areas which are subject to the regulations of the Environmental Management Commission.

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976;
Amended Eff. September 13, 1981.

15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS

The coastal areas for the purposes of these Regulations are defined to include:

- (1) the Outer Banks;
- (2) those land areas bordering the coastal waters, including all waters assigned a salt water "S" classification and all tributaries that have experienced excessive growths of microscopic or macroscopic vegetation or that, because of their relative size and lack of water exchange are found by the Commission to be subject to such excessive growths; and
- (3) land areas bordering all natural impoundments situated east of the line established by the North Carolina Environmental Management Commission to designate coastal waters, said land being described as follows: "Extends from a point on the North Carolina/South Carolina state line near Calabash, North Carolina, generally along the lines of the Atlantic Coast Line Railroad and Norfolk Southern Railway, northeasterly and northerly to River Mile 66.0 (Lock No. 1) on the Cape Fear River; thence northerly to River Mile 30.0 on Black River; thence easterly to River Mile 48 on the North East Cape Fear River; thence northerly and easterly to River Mile 22.5 in New River; thence easterly and northerly to River Mile 25.0 on White Oak River (Atlantic Coast Line Railroad Bridge); thence northerly and easterly to River Mile 38.9 on Neuse River (Norfolk Southern Railway Bridge); thence northerly to River Mile 44.6 on Pamlico River (Norfolk Southern Railway Bridge); thence northeasterly and northerly crossing Albemarle Sound along Norfolk

Southern Railway Bridge; thence northerly and easterly to River Mile 13.5 on Perquimans River (Norfolk Southern Railway Bridge); thence easterly to River Mile 20.0 on Pasquotank River (Norfolk Southern Railway Bridge); and thence northerly to the North Carolina/Virginia state line near Moyock, North Carolina."

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1); Eff. February 1, 1976; Amended Eff. September 13, 1981.

15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN

(a) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Environmental Health Section, Department of Human Resources, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(b) No wastes shall be discharged to waters classified "SB" unless these wastes are treated to the extent necessary to assure protection of assigned water quality standards.

(c) The Director may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in:

- (1) growths of microscopic vegetation such that chlorophyll a values are greater than 40 ug/l; or
- (2) growths of microscopic or macroscopic vegetation which substantially impair the intended best usage of the waters.

(d) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is specifically adopted by reference as promulgated on October 3, 1980.

(e) In all cases where connection to an area-wide sewerage system is feasible, such connection thereto shall be required.

(f) Septic tank systems shall not be approved in high density areas. For purposes of this Regulation high density areas are defined as those areas producing more than 1,200 gallons of waste per acre per day or which contain more than three residential units per acre. For purposes of this Regulation a septic tank system is defined as a ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field. Septic tank systems shall be designed and constructed in accordance with Environmental Management Commission regulations governing septic tank systems.

(g) Interim Treatment and Disposal Facilities. In those cases where an approved area-wide collection and treatment system is not available, and where discharge to the surface waters is prohibited in Paragraphs (a), (b), (c), (d), and where use of a septic tank system is prohibited by paragraph (f), interim treatment and disposal facilities may be approved subject to their meeting the following requirements.

- (1) Wastes other than those disposed of by spray irrigation shall receive tertiary treatment followed by adequate bactericidal treatment. For purposes of this Regulation tertiary treatment shall constitute biological treatment followed by acceptable solids removal to the extent accomplished by filtration. Also, flow equalization will be required unless it can be adequately demonstrated that either the wastewater influent flow rate will be of a uniform nature or that the proposed treatment units are designed such that they can adequately treat this wastewater without experiencing hydraulic overload.
- (2) Waste treatment facilities (except septic tank-surface sand filter systems) shall be located at least 10 feet from adjacent property under separate ownership, developed or undeveloped and at least 10 feet from on-property residential units if these units are to be sold, e.g., condominiums, residential subdivision houses. Septic tank-surface sand filter systems shall be located at least 200 feet from on-property residential units if these units are to be sold and at least 200 feet from adjacent property under separate ownership.
- (3) Waste treatment facilities shall be equipped with effective noise and odor control devices and are to be enclosed by a solid or semi-solid structure or other approved structure. An automatically activated standby power source shall be provided. All essential treatment and disposal units shall be provided in duplicate.

- (4) Treated wastes may be disposed of in on-site disposal facilities, which shall be located at least 500 feet from any impounded public surface water supply or public shallow (less than 50 feet deep) ground water supply, and at least 100 feet from a private ground water supply except when a study of the soil would indicate a lesser separation acceptable.
- (5) Waste disposal facilities shall be located at least 100 feet from any waters classified SA and at least 50 feet from any other waters. In the case of drainage ditches that are normally dry this distance may be reduced to 25 feet.
- (6) Waste disposal facilities are to be designed on the basis of site conditions and soil percolation rates. In Parts (A), (B), and (C) of this Subparagraph are given the maximum loading rates for three different treatment systems. Higher loading rates or other methods of waste disposal may be approved by the Director based upon data submitted by the applicant.
 - (A) Subsurface Disposal Trench. One and one-half gallons per day per square foot of trench bottom based on maximum trench width of three feet. Trenches shall be separated at least eight feet center to center.
 - (B) Low Pressure Distribution System. One gallon per day per square foot of effective absorption area encompassed by the distribution system. The calculation of the amount of effective absorption area required shall be based on a maximum distribution line separation of five feet center to center.
 - (C) Rotary Distributors. Ten gallons per day per square foot of surface area.
- (7) Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The term "green area" contained herein is defined as an area suitable for waste disposal, either in its natural state or which has been modified by planting vegetative cover of grasses or low growing shrubbery. Green areas shall not include street or roadway right-of-ways or areas not available for waste disposal. Not more than 25 percent of the required area may be covered with non-traffic bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as parking lots, driveways, or for other vehicular traffic uses.
- (8) Wastes that are to be disposed of by spray irrigation shall receive a level of treatment which will not render either the irrigation system or the disposal area unworkable. Spray irrigation systems shall be located at least 200 feet from any adjoining property, buffered by trees to prevent excessive drift. Such areas shall be surrounded by fencing with warning signs to discourage human use or trespass, and designed according to good engineering practices with the application rate not to exceed one and three fourth inches per week-unless the Director determines, based on data submitted by the applicant, that a higher application rate is justified.

History Note: Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a); 143-215.1(b)(1); 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. November 1, 1986; April 1, 1983; September 13, 1981; May 11, 1980.

15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS

- (a) Privately owned waste collection treatment and disposal systems serving establishments existing on the effective date of these Regulations shall comply with the requirements enumerated in these Regulations unless impossible. If adherence to the guides is not possible, the highest level of control technology consistent with site limitations shall be employed. No expansion of the load tributary to existing non-public facilities will be allowed until compliance with the guides established in these Regulations is obtained.
- (b) Privately owned wastewater collection, treatment and disposal systems serving establishments not in existence on the effective date of these Regulations shall comply with the provisions of these Regulations.

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976;
Amended Eff. September 13, 1981.

15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES

(a) Existing publicly owned waste collection, treatment, and disposal facilities shall comply with the requirements of these Regulations unless such compliance is determined by the Commission to be "not in the public interest." Such a finding would result when requirements of these Regulations could not be met even after "best available control technology economically achievable" has been provided.

(b) New publicly owned waste collection, treatment, and disposal facilities shall comply with the provisions of these Regulations, and any other applicable regulations of the Commission.

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976;
Amended Eff. September 13, 1981.

15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS

No exception from the requirements of these Regulations shall be made until such exception is approved by the Commission.

History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);
Eff. February 1, 1976.

15A NCAC 02H .0408 DISPOSAL OF STORMWATER

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1);
Eff. November 1, 1986;
Repealed Eff. January 1, 1988.

15A NCAC 02H .0409 TRIAL IMPLEMENTATION PERIOD/COASTAL STORMWATER CONTROLS

History Note: Authority G.S. 143-215.3(a)(1);
Eff. November 1, 1986;
Repealed Eff. January 1, 1988.

SECTION .0500 - WATER QUALITY CERTIFICATION

15A NCAC 02H .0501 PURPOSE

(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section shall only apply to specific activities which require state review after the effective date of this Rule and which require a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section 404(f)(1)(A)-(F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.

(b) These Rules outline the application and review procedures for activities that require water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required whenever construction or operation of facilities will result in a discharge into navigable waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR 328.3 and 40 CFR 230.3.

(c) Certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

- (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in the following Rules are required for each individual certification.

- (2) General certifications are issued for specific types or groups of activities that are similar in nature and considered to have minimal impact. The application and review procedures for requesting concurrence from the Division that the general certification can be used for the proposed activity are the same as the procedures outlined in the following Rules for individual certifications unless specifically stated otherwise in the general certification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.

15A NCAC 02H .0502 APPLICATION

(a) Application for Certification. Any person, as defined in Article 21, Chapter 143, North Carolina General Statutes, desiring issuance of the state certification or coverage under a general certification required by Section 401 of the Federal Water Pollution Control Act as amended shall file with the Director of the North Carolina Division of Water Quality (director), at the office in Raleigh, North Carolina, an original and six copies of an application for certification. Submission of an application to the Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application for certification. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
- (4) the nature of the activity to be conducted by applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;
- (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- (8) description of the type of waste treatment facilities if applicable.

(b) Maps. There shall be attached to the application a map(s) or sketch(es) of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out its activity; the location, dimensions and type of any structures erected or to be erected on said lands for use in connection with the activity; and the location and extent of the receiving waters including wetlands within the boundaries of said lands.

(c) Power to Request Additional Information. The Director may request, and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application.

(d) Omissions From Applications. If the applicant considers that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information.

(e) Investigations. The staff of the Department of Environment, Health, and Natural Resources (department) shall conduct such investigation as the Director deems necessary; and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management, or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.

History Note: Authority G.S. 143-215.3(a)(1); 143-215(c); 143B-282(1)(u);
Eff. February 1, 1976;
Amended Eff. December 1, 1984; January 1, 1979;

*RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;
Amended Eff. October 1, 1996.*

15A NCAC 02H .0503 PUBLIC NOTICE

(a) Notice by Publication. Notice of each pending application for an individual certification shall be published one time in a newspaper having general circulation in the county in which the discharge will occur, or as provided in Paragraph (c) of this Rule. Publication shall be made at least 15 days prior to proposed final action by the Director upon the application and not more than 20 days after acceptance of a completed application.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director upon the application. The notice shall also state that additional information is on file with the department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the department.

(c) The public notice requirement may also be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 7J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

(d) Notice of Hearing. If the Director determines that a hearing should be held concerning the granting or denial of the application, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(e) Water Quality Certification Mailing List. Any person, may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a water quality certification mailing list and shall mail copies of notices to all persons on the list.

(f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
Eff. February 1, 1976;
Amended Eff. December 1, 1984; September 1, 1984
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0502 Eff. October 1, 1996;
Amended Eff. October 1, 1996.*

15A NCAC 02H .0504 HEARING

(a) Public Hearing on Certification. If the Director determines that it is in the public interest that a public hearing for the purpose of reviewing public comment and additional information be held prior to granting or denying certification, the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and give notice as required in Rule .0503(d) and (e) of this Section. Such hearing shall be held within 90 days following date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.

(b) Hearing for Applicant Upon Certification Denial. An applicant whose certification is denied or granted subject to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996;
Amended Eff. October 1, 1996.*

15A NCAC 02H .0505 DELEGATIONS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c);
Eff. February 1, 1976;
Repealed Eff. December 1, 1984.

15A NCAC 02H .0506 REVIEW OF APPLICATIONS

(a) In evaluating requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule, the Director shall determine if the proposed activity has the potential to remove or degrade those significant existing uses which are present in the wetland or surface water. Activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2)-(5) of this Rule. Those activities covered by general certifications [15A NCAC 2H .0501(c)(2)] which do not require written concurrence from the Division shall be deemed certified if the conditions of the certification are followed and may proceed without the review procedures outlined in Paragraphs (b) through (e) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 2B .0103(c); otherwise the designated uses as outlined at 15A NCAC 2B .0231(a)(1)-(6) are assumed to exist in all classes of wetlands, and the appropriate review procedures shall be undertaken. Certification shall be issued where the Director determines water quality standards are met, including protection of existing uses.

(b) The Director shall issue a certification upon determining that existing uses are not removed or degraded by a discharge to classified surface waters for an activity which:

- (1) has no practical alternative under the criteria outlined in Paragraph (f) of this Rule;
- (2) will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;
- (3) does not result in the degradation of groundwaters or surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through mitigation as described at Subparagraphs (h)(1) of this Rule.

(c) The Director shall issue a certification upon determining that sufficient existing uses are not removed or degraded by a discharge to Class WL wetlands as defined at 15A NCAC 2B .0101(c)(8), for an activity which:

- (1) has no practical alternative as described in Paragraph (f) of this Rule, or impacts less than three acres of Class WL wetlands;
- (2) will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule; or impacts less than one acre of wetland within 150 feet (including less than 1/3 acre of wetland within 50 feet), of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United State Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data;
- (3) does not result in the degradation of groundwaters or surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements or as described in Subparagraph (h)(1)-(8) of this Rule.

(d) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to Class SWL wetland as defined at 15A NCAC 2B .0101(d)(4), wetlands that are contiguous to waters designated as ORW, HQW, SA, WS-I, WS-II or Trout, or wetlands that are contiguous to rivers designated as a North Carolina or National Wild and Scenic River for an activity which satisfies Subparagraphs (c)(2)-(5) of this Rule, and:

- (1) for wetlands classified as coastal wetlands pursuant to 15A NCAC 7H .0205:

- (A) has no practical alternative as described in Paragraph (f) of this Rule; and
 - (B) is water dependent and requires access to water as a central element of its basic function, although, projects funded by government agencies may be exempted from this requirement; and
 - (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1)-(7) and (9) of this Rule.
- (e) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to wetlands of exceptional state or national ecological significance including but not limited to Class UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the conservation of state or federally listed threatened or endangered species, provided that the wetlands have been so classified or designated prior to the date of application for certification or a draft environmental impact statement has been submitted to the Director, for an activity which satisfies Subparagraphs (c)(2)-(5) and (d)(1)-(2) and:
- (1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need; and
 - (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1)-(7) and (10) of this Rule.
- (f) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters or wetlands.
- (g) Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:
- (1) The spatial and dimensional requirements of the project; or
 - (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
 - (3) The purpose of the project and how the purpose relates to placement, configuration or density.
- (h) Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in accordance with the following guidelines:
- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project. Mitigation required by the U.S. Army Corps of Engineers shall be considered to constitute the mitigation required by the certification unless the Director determines that the mitigation proposal does not meet the criteria established in Subparagraph (6) of this Paragraph.
 - (2) Mitigation shall not be required for impacts to Class WL wetlands of less than one acre.
 - (3) Participation in wetland restoration programs coordinated by the Department of Environmental, Health, and Natural Resources shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical. Mitigation sites approved by the U.S. Army Corps of Engineers shall be deemed to be consistent with the Department's restoration plan.
 - (4) Acceptable methods of wetlands mitigation are listed below in the order of preference:
 - (A) Restoration: the re-establishment of wetland hydrology and vegetation in an area where it previously existed.
 - (B) Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.
 - (C) Enhancement: increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
 - (D) Preservation: protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
 - (5) Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
 - (6) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.
 - (7) Wetlands mitigation shall be conducted based on the following ratios (acres mitigated to acres loss); 4:1, for wetlands located within 150 feet of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; 2:1, for wetlands located between 150 feet and 1,000 feet from the mean high water line or normal water level of any perennial or intermittent water body

as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; and 1:1, for all other wetlands. For linear projects which impact less than 3 acres of wetlands the ratio shall be 2:1 regardless of the distance from surface waters. The above ratios apply only to restoration. The acres of required mitigation for the other types of mitigation shall be determined by multiplying the above ratios by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios. This Subparagraph shall not apply to general certifications until the Department has established a wetlands restoration program or until January 1, 1997, whichever occurs first.

- (8) Mitigation for impacts to wetlands designated in Paragraph (c) of this Rule shall be conducted within the same river basin and physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS-III shall be replaced within the water supply watershed when practical.
- (9) Mitigation for impacts to wetlands designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS-I or WS-II shall be replaced within the water supply watershed when practical.
- (10) Mitigation for impacts to wetlands designated in Paragraph (e) of this Rule shall be of the same wetland type and within the same watershed when practical.
 - (i) The Director shall not duplicate the site-specific application of any guidelines employed by the United State Army Corps of Engineers in evaluating permit applications under 33 U.S.C. 1344 and applicable federal regulations.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996.

15A NCAC 02H .0507 ISSUANCE OF CERTIFICATION

(a) Time Limit for Final Action on Certification Application. All applications for certification shall be granted or denied within 60 days after receipt at the offices of the Director in Raleigh, North Carolina. Failure to take final action within 60 days shall result in a waiver of the certification requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) Final decision is to be made pursuant to a public hearing;
- (3) Applicant fails to furnish information necessary to the Director's decision;
- (4) Applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision or;
- (5) Information necessary to the Director's decision is unavailable.

(b) Time Limit for Final Action on Certification Application After Hearing. All applications for certification shall be granted or denied within 60 days after public hearing. Failure to take final action within 60 days shall result in a waiver of the certification requirement by the Director unless the applicant otherwise agrees in writing, or unless Subparagraph (a)(3), (4), or (5) of this Rule shall apply.

(c) Conditions of Certification. Any certification issued pursuant to this Rule may contain such conditions as the Director shall deem necessary to insure compliance with Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.

(d) Modification or Revocation of Certification

- (1) Any certification issued pursuant to this Rule shall be subject to revocation or modification for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.
- (2) Any certification issued pursuant to this Rule shall be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if conditions under which the certification was made have changed.

(e) Notification of Unapproved Application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to approve; and a copy of the notification shall be mailed to the appropriate federal licensing or permitting agency and EPA.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; December 1, 1984;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;
Amended Eff. October 1, 1996.

SECTION .0600 - AIR QUALITY PERMITS

15A NCAC 02H .0601 PURPOSE AND SCOPE
15A NCAC 02H .0602 DEFINITIONS
15A NCAC 02H .0603 APPLICATIONS
15A NCAC 02H .0604 FINAL ACTION ON PERMIT APPLICATIONS
15A NCAC 02H .0605 ISSUANCE: REVOCATION: AND ENFORCEMENT OF PERMITS
15A NCAC 02H .0606 DELEGATION OF AUTHORITY

History Note: Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 143-213; 143-215.3(a)(1), (4); 143-215.108; 143-215.109; 143-215.114;
Eff. February 1, 1976;
Readopted Eff. June 1, 1981;
Amended Eff. December 1, 1993; December 1, 1992; October 1, 1991; August 1, 1991;
Repealed Eff. July 1, 1994.

15A NCAC 02H .0607 COPIES OF REFERENCED DOCUMENTS

History Note: Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 150B-21.6;
Eff. December 1, 1976;
Amended Eff. December 1, 1992; June 1, 1980; December 15, 1978; November 1, 1978;
Readopted with Change Eff. June 1, 1981;
Amended Eff. August 1, 1991; July 1, 1988; July 1, 1987; July 1, 1984;
Repealed Eff. July 1, 1994.

15A NCAC 02H .0608 PERMITS FOR SOURCES IMPACTING NONATTAINMENT AREAS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);
Eff. July 1, 1979;
Amended Eff. June 1, 1980;
Repealed Eff. June 1, 1981.

15A NCAC 02H .0609 PERMIT FEES

History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b);
Eff. August 1, 1988;
Amended Eff. December 1, 1992;

Repealed Eff. January 1, 1995.

15A NCAC 02H .0610 PERMIT REQUIREMENTS FOR TOXIC AIR POLLUTANTS

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45; Eff. May 1, 1990; Amended Eff. July 1, 1996; October 1, 1993; December 1, 1992; September 1, 1992; March 1, 1992; Temporary Amendment Eff. July 20, 1997; Temporary Amendment Expired April 11, 1998; Repealed Eff. April 1, 1999.

SECTION .0700 - DAM SAFETY APPROVALS

15A NCAC 02H .0701	PURPOSE
15A NCAC 02H .0702	DEFINITION OF TERMS
15A NCAC 02H .0703	PROCEDURES FOR OBTAINING APPROVAL
15A NCAC 02H .0704	APPLICATION AND SUPPLEMENTAL INFORMATION
15A NCAC 02H .0705	STANDARDS FOR IMPOSITION OF CONDITIONS ON APPROVAL
15A NCAC 02H .0706	STANDARDS FOR COMMENCEMENT: SUPERVISION AND COMPLETION
15A NCAC 02H .0707	STANDARDS FOR REVOKING: DENYING: MODIFYING APPROVAL
15A NCAC 02H .0708	DELEGATION OF AUTHORITY

History Note: Authority G.S. 143-215.3(a)(4); 143-215.26 through 143-215.30; 143-215.34; Eff. February 1, 1976; Amended Eff. November 1, 1978; September 10, 1976; Repealed Eff. June 15, 1980.

SECTION .0800 – LABORATORY CERTIFICATION

15A NCAC 02H .0801 PURPOSE

The purpose of these Rules is to set out certification criteria for laboratory facilities performing any tests, analyses, measurements, or monitoring required under G.S. 143 Article 21 or any rules adopted thereunder, and to establish fees for certification program support.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978; Temporary Amendment Eff. October 1, 2001; Amended Eff. August 1, 2002.

15A NCAC 02H .0802 SCOPE

These Rules apply to laboratory facilities which perform and report analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500 (Only facilities classified in accordance with Classification of Water Pollution Control Systems Rules found in 15A NCAC 08G .0300 are subject to these Rules.); Groundwater Rules found in 15A NCAC 02L .0100, .0200, and .0300; Waste Not Discharged to Surface Waters Rules found in 15A NCAC 02H .0200; Point Source Discharges to the Surface Waters Rules found in 15A NCAC 02H .0100. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as regulated in 15A NCAC 02H .0900. Laboratory facilities performing and reporting analyses for field parameters only, shall be considered for certification as specified in Rule .0805(g) of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.*

15A NCAC 02H .0803 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

- (1) "Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.
- (2) "Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable pursuant to these Rules.
- (3) "Certified Data" shall be defined as any analytical result, including the supporting documentation, obtained through the use of a method or procedure which has been deemed acceptable by the State of North Carolina for Laboratory Certification purposes pursuant to these Rules.
- (4) "Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples, including Field Parameters, for others for a fee.
- (5) "Decertification" means loss of certification.
- (6) "Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.
- (7) "Field Parameters", for the purpose of these Rules shall include Total Residual Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, and Temperature.
- (8) "Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.
- (9) "Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).
- (10) "Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).
- (11) "Other" laboratory means a facility that does not require laboratory certification as part of its routine operation and does not analyze samples for a fee, or is doing business as a non-profit facility.
- (12) "Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900 and approved by the Division of Water Quality.
- (13) "State" means the North Carolina Department of Environment and Natural Resources, or its successor.
- (14) "State Laboratory" means the Laboratory Section of the North Carolina Division of Water Quality, or its successor.
- (15) "Unacceptable results" means those results on performance evaluation samples that exceed the specified acceptable range as indicated by a US EPA accredited vendor.
- (16) "Uncertified data" shall be defined as any analytical result, including the supporting documentation, obtained using a method or procedure which is not acceptable to the State Laboratory pursuant to these Rules.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.*

15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED

(a) Commercial laboratories are required to obtain certification for parameters which will be reported by the client to comply with State surface water monitoring, groundwater, and pretreatment Rules. Municipal and Industrial Laboratories are required to obtain certification for parameters which will be reported to the State to comply with State surface water monitoring,

groundwater, and pretreatment Rules. Commercial, Municipal, Industrial and Other facilities are required to obtain certification for field parameters which will be reported by the client to comply with State surface water, groundwater, and pretreatment Rules.

(b) A listing of certifiable inorganic parameters follows:

- (1) Alkalinity
- (2) Aquatic Humic Substances
- (3) BOD
- (4) COD
- (5) Chloride
- (6) Chlorine, Total Residual
- (7) Chlorophyll
- (8) Coliform, Fecal
- (9) Coliform, Total
- (10) Color
- (11) Conductivity
- (12) Cyanide
- (13) Dissolved Oxygen
- (14) Fluoride
- (15) Hardness, Total
- (16) MBAS
- (17) Ammonia Nitrogen
- (18) Total Kjeldahl Nitrogen (TKN)
- (19) Nitrate plus Nitrite Nitrogen
- (20) Nitrate Nitrogen
- (21) Nitrite Nitrogen
- (22) Total Phosphorus
- (23) Orthophosphate
- (24) Oil and Grease
- (25) pH
- (26) Phenols
- (27) Residue, Settleable
- (28) Residue, Total
- (29) Residue, Total Dissolved 180°C
- (30) Residue, Total Suspended
- (31) Salmonella
- (32) Sulfate
- (33) Sulfide
- (34) Sulfite
- (35) Temperature
- (36) Total Organic Carbon (TOC)
- (37) Turbidity
- (38) Leachate Procedures
- (39) Vector Attraction Reduction - All Options

(c) Metals: Each of the following will be considered a certifiable Metals analyte:

- (1) Aluminum
- (2) Antimony
- (3) Arsenic
- (4) Barium
- (5) Beryllium
- (6) Cadmium
- (7) Calcium
- (8) Chromium, Total
- (9) Chromium, Hexavalent
- (10) Cobalt
- (11) Copper

- (12) Iron
- (13) Lead
- (14) Magnesium
- (15) Manganese
- (16) Mercury
- (17) Molybdenum
- (18) Nickel
- (19) Selenium
- (20) Silver
- (21) Thallium
- (22) Tin
- (23) Vanadium
- (24) Zinc

(d) Each of the analytical categories listed in this Paragraph shall be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. A listing of certifiable organic parameters follows:

- (1) Purgeable Halocarbons
- (2) Purgeable Aromatics
- (3) Acrolein, Acrylonitrile, Acetonitrile
- (4) Phenols
- (5) Benzidines
- (6) Phthalate Esters
- (7) Nitrosamines
- (8) Organochlorine Pesticides
- (9) Polychlorinated Biphenyls
- (10) Nitroaromatics and Isophorone
- (11) Polynuclear Aromatic Hydrocarbons
- (12) Haloethers
- (13) Chlorinated Hydrocarbons
- (14) Purgeable Organics
- (15) Base/Neutral and Acid Organics
- (16) Chlorinated Acid Herbicides
- (17) Organophosphorus Pesticides
- (18) Total Petroleum Hydrocarbons - (TPH) California GC Method - Diesel Range Organics
- (19) Total Petroleum Hydrocarbons - (TPH) California GC Method - Gasoline Range Organics
- (20) Nonhalogenated Volatile Organics
- (21) N-Methylcarbamates
- (22) 1,2, Dibromoethane (EDB)
- (23) Extractable Petroleum Hydrocarbons
- (24) Volatile Petroleum Hydrocarbons
- (25) Chlorinated Phenolics
- (26) Adsorbable Organic Halides

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.*

15A NCAC 02H .0805 CERTIFICATION AND RENEWAL OF CERTIFICATION

(a) Prerequisites and requirements for Certification. The following requirements must be met prior to certification. Once certified, failure to comply with any of the following items will be a violation of certification requirements. All "Field Parameter" only facility requirements are located in Paragraph (g) of this Rule.

- (1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR-136.3; Standard Methods for the Examination

of Water and Wastewater, 18th Edition; or Test Methods for Evaluating Solid Waste, SW 846, Third Edition. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained for a cost of forty-two dollars (\$42.00), from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, DC, 20402. The publication number is 869-042-00148-6. Standard Methods for the Examination of Water and Waste, is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235. The costs are as follows: 18th Edition -one hundred sixty dollars (\$160.00), 19th Edition - one hundred eighty dollars (\$180.00), 20th Edition - two hundred dollars (\$200.00). Copies of Test Methods for Evaluating Solid Waste, SW 846, Third Edition may be purchased for a cost of three hundred sixty seven dollars (\$367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013, Chapter 8. The document is available from US EPA; Office of Research and Development, Washington, NC 20460 at no cost. The method for Total Petroleum Hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for Addressing Fuel Leaks: California Regional Quality Control Board San Francisco Bay Region. The method for Total Petroleum Hydrocarbons is available from the State Laboratory at no cost. The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); January, 1998. The Director may approve other analytical procedures that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.

- (2) Performance Evaluations. Annually, each certified laboratory must demonstrate acceptable performance on evaluation samples as required by these Rules.
 - (A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA/DMR/QA) Study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate.
 - (B) Commercial laboratories must participate annually in water pollution studies by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both samples will be considered the first unacceptable result for certification purposes and a rerun sample must be submitted.
 - (C) Laboratories requesting initial certification must submit an acceptable performance sample result for each parameter for which performance samples are available. Laboratories that submit two unacceptable results for a particular parameter must then submit two consecutive acceptable results for that parameter prior to initial certification.
 - (D) If performance samples are not available for a parameter, certification for that parameter will be based on the proper use of the approved procedure, the on-site inspection, and adherence to the other requirements in this Section. Analysis of split samples may also be required.
- (3) Supervisory Requirements.
 - (A) The supervisor of a commercial laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of two years laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of four years experience in analytical chemistry.
 - (B) The supervisor of a municipal or industrial waste water treatment plant laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of six months laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum

plus a minimum of two years experience in analytical chemistry. Non-degree supervisors must have at least six years laboratory experience in analytical chemistry.

- (C) All laboratory supervisors are subject to review by the State Laboratory. One person may serve as supervisor of no more than two laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analyses made for these Rules. The supervisor must work in the laboratory or visit the laboratory once each day of normal operations. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor cannot be in charge for more than six consecutive weeks. Existing laboratory supervisors that do not meet the requirements of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements. Previous laboratory-related performance will be considered when reviewing the qualifications of a potential laboratory supervisor.
- (4) **Laboratory Manager.** Each laboratory must designate a laboratory manager and include his name and title on the application for certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with a replacement qualified pursuant to these Rules. At commercial laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.
- (5) **Application.** Each laboratory requesting initial state certification shall submit an application in duplicate, accompanied by the application fee and the laboratory's Quality Assurance Manual to the State Laboratory. Separate application and certification shall be required for all laboratories maintained on separate premises even though operated under the same management; however, separate certification is not required for separate buildings on the same or adjoining grounds. After receiving a completed application and prior to issuing certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (6) **Facilities and equipment.** Each laboratory requesting certification must contain or be equipped with the following:
 - (A) A minimum of 150 sq. ft. of laboratory space;
 - (B) A minimum of 12 linear feet of laboratory bench space;
 - (C) A sink with hot and cold water;
 - (D) An analytical balance capable of weighing 0.1 mg, mounted on a shock proof table;
 - (E) A refrigerator of adequate size to store all samples and maintain temperature of four degrees Celsius;
 - (F) A copy of each approved analytical procedure being used in the laboratory;
 - (G) A source of distilled or deionized water that will meet the minimum criteria of the approved methodologies;
 - (H) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.
- (7) **Analytical Quality Control Program.** Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control document shall be available for inspection by the State Laboratory. The following are requirements for certification and must be included in each certified laboratory's quality control program:
 - (A) All analytical data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.
 - (B) Excluding Oil and Grease, all residue parameters, leachate extractions, residual chlorine, and coliform, analyze one known standard in addition to calibration standards each day samples are analyzed to document accuracy. Analyze one suspended residue, one dissolved residue, one residual chlorine and one oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.
 - (C) Except for Oil and Grease (EPA Method 413.1), settleable solids or where otherwise specified in an analytical method, analyze five percent of all samples in duplicate to document precision.

Laboratories analyzing less than 20 samples per month must analyze at least one duplicate each month samples are analyzed.

- (D) Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.
 - (E) All quality control requirements in these Rules as set forth by the State Laboratory.
 - (F) Any time quality control results indicate an analytical problem, the problem must be resolved and any samples involved must be rerun if the holding time has not expired.
 - (G) All analytical records must be available for a period of five years. Records, which are stored only on electronic media, must be maintained and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review.
 - (H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.
 - (I) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards must bracket the concentration of the samples analyzed. One of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along with each group of samples. For colorimetric analyses, a series of five standards for a curve prepared annually or three standards for curves established each day or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid-range, each time a new stock standard is prepared, or at least every twelve months. Each analyst performing the analytical procedure must produce a standard curve.
 - (J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.
 - (K) The analytical balance must be checked with one class S, or equivalent, standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.
 - (L) Chemicals must be dated when received and when opened. Reagents must be dated and initialed when prepared.
 - (M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained. Each sample must clearly indicate the State of North Carolina collection site on all record transcriptions.
 - (N) At any time a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating corrective actions taken to prevent the problem for future samples.
 - (O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or be checked, at a minimum annually, against a NIST traceable thermometer and proper corrections made.
- (8) Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807(e) of this Section.
- (b) Issuance of Certification.
- (1) Upon compliance with these Rules, certification shall be issued by the Director, Division of Water Quality, Department of Environment and Natural Resources or his delegate, for each of the applicable parameters requested within 30 days.
 - (2) Initial certifications shall be issued for prorated time periods to schedule all certification renewals on the first day of January and shall be valid for one year.
- (c) Maintenance of Certification.

- (1) To maintain certification for each parameter, a certified laboratory must analyze up to four performance evaluation samples per parameter per year submitted by an accredited vendor as an unknown. Laboratories submitting unacceptable results on a performance evaluation sample may be required to analyze more than four samples per year.
 - (2) In addition, the State Laboratory may request that samples be split into two equal representative portions, one part going to the State and the other to the certified laboratory for analysis.
 - (3) The State laboratory may submit or require clients to submit blind performance samples or split samples under direction of State Laboratory personnel.
 - (4) A certified laboratory shall be subject to periodic announced or unannounced inspections during the certification period and shall make time and records available for inspections and must supply copies of records for any investigation upon written request by the State Laboratory.
 - (5) A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.
 - (6) A certified laboratory must submit written notice of any changes of location, ownership, address, name or telephone number within 30 days of such changes.
 - (7) A certified laboratory must submit a written amendment to the certification application each time that changes occur in methodology, reporting limits, and major equipment. The amendment must be received within 30 days of such changes.
- (d) Certification Renewals
- (1) Certification renewals of laboratories shall be issued for one year.
- (e) Data reporting.
- (1) Certified commercial laboratories must make data reports to their clients that are signed by the laboratory supervisor. This duty may be delegated in writing; however, the responsibility shall remain with the supervisor.
 - (2) Whenever a certified commercial laboratory refers or subcontracts samples to another certified laboratory for analyses, the referring laboratory must supply the date and time samples were collected to insure holding times are met. Subcontracted samples must clearly indicate the State of North Carolina as the collection site on all record transcriptions. Laboratories may subcontract sample fractions, extracts, leachates and other sample preparation products provided that all Rules and requirements of 15A NCAC 02H .0800 are documented. The initial client requesting the analyses must receive the original or a copy of the report made by the laboratory that performs the analyses.
 - (3) All uncertified data must be clearly documented as such on the benchsheet and on the final report.
- (f) Discontinuation of Certification.
- (1) A laboratory may discontinue certification for any or all parameters by making a written request to the State Laboratory.
 - (2) After discontinuation of certification, a laboratory may be recertified by meeting the requirements for initial certification; however, laboratories that discontinue certification during any investigation shall be subject to Rule .0808 of this Section.
- (g) Prerequisites and requirements for Field Parameter Certification. Only the following requirements must be met prior to certification for Field Parameter Laboratories. Once certified, failure to comply with any of the following items will be a violation of certification requirements.
- (1) Data pertinent to each analysis must be maintained for five years. Certified Data must consist of date collected, time collected, sample site, sample collector, and sample analysis time. The field benchsheets must provide a space for the signature or initials of the analyst, and proper units of measure for all analyses.
 - (2) A record of instrument calibration where applicable, must be filed in an orderly manner so as to be readily available for inspection upon request.
 - (3) A copy of each approved analytical procedure must be available to each analyst.
 - (4) Each facility must have glassware, chemicals, supplies, equipment, and a source of distilled or deionized water that will meet the minimum criteria of the approved methodologies.
 - (5) Supervisors of laboratories certified for Field Parameters only must meet the requirements of Subparagraph (a)(3)(A) or (a)(3)(B) of this Section, or possess a chemistry or related degree with two years of related environmental experience, or hold any Biological Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G.
 - (6) Application: Each Field Parameter Laboratory shall submit an application in duplicate.

- (7) Performance Evaluations. Each Field Parameter Laboratory must participate in an annual quality assurance study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns. If performance evaluations are not available for a parameter, certification for that parameter may be based on the proper use of the approved procedure as determined by an announced or unannounced on-site inspection.
- (8) Decertification and Civil Penalties. A laboratory facility can be decertified for infractions as outlined in Rule .0807 of this Section.
- (9) Recertification. A laboratory facility can be recertified in accordance with Rule .0808 of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; July 1, 1985; December 1, 1984; November 1, 1978;
RRC Objection Eff. October 15, 1992 due to lack of statutory authority;
Amended Eff. December 21, 1992;
RRC Objection Removed Eff. December 16, 1993;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0806 FEES ASSOCIATED WITH CERTIFICATION PROGRAM

- (a) An applicant for laboratory certification, excluding those laboratories seeking Field Parameter Certification only, must submit to the Department of Environment and Natural Resources, Laboratory Section, a non-refundable fee of three hundred dollars (\$300.00) for the evaluation and processing of each application.
- (b) Municipal, Industrial and Other laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte; however, the minimum fee will be one thousand three hundred fifty dollars (\$1,350.00) per year.
- (c) Commercial laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte; however, the minimum fee will be two thousand seven hundred dollars (\$2,700.00) per year.
- (d) Prior to receiving initial certification, a laboratory must pay the required fee as specified in Paragraph (b) or (c) of this Rule. Initial certification fee will be prorated on a semi-annual basis to make all certification renewals due on the first day of January.
- (e) Once certified, a laboratory must pay the full annual parameter fee for each parameter added to their certificate.
- (f) A laboratory decertified for all parameters must pay initial certification fees prior to recertification.
- (g) A laboratory decertified for one or more parameters must pay a fee of two hundred dollars (\$200.00) for each parameter for which it was decertified prior to recertification.
- (h) Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification and maintenance of certification.
- (i) Annual certification fees are due 60 days after receipt of invoice.
- (j) A two hundred fifty dollar (\$250.00) late payment fee must be paid when annual certification fees are not paid by the date due.
- (k) Commercial facilities analyzing samples for field parameters only must pay an annual fee of two hundred dollars (\$200.00) per year.
- (l) Municipal and Industrial facilities analyzing samples for field parameters only must pay an annual fee of one hundred dollars (\$100.00) per year.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0807 DECERTIFICATION AND CIVIL PENALTIES

- (a) Laboratory Decertification. A laboratory may be decertified, for any or all parameters, for up to one year for any of the following infractions:

- (1) Failing to maintain the facilities, or records, or personnel, or equipment, or quality control program as set forth in the application, and these Rules; or
- (2) Submitting inaccurate data or other information; or
- (3) Failing to pay required fees by the date due; or
- (4) Failing to discontinue supplying data for clients or programs described in Rule .0802 of this Section during periods when a decertification is in effect; or
- (5) Failing to submit a split sample to the State Laboratory as requested; or
- (6) Failing to use approved methods of analysis; or
- (7) Failing to report laboratory supervisor or equipment changes within 30 days of such changes; or
- (8) Failing to report analysis of required annual performance evaluation samples submitted by an EPA approved vendor within the specified time limit; or
- (9) Failing to allow an inspection by an authorized representative of the State Laboratory; or
- (10) Failing to supply analytical data requested by the State Laboratory; or
- (11) Failing to submit a written amendment to the certification application within 30 days of applicable changes; or
- (12) Failing to meet required sample holding times; or
- (13) Failing to respond to requests for information by the date due; or
- (14) Failing to comply with any other terms, conditions, or requirements of this Section or of a laboratory certification.

(b) Parameter Decertification. A laboratory may receive a parameter decertification for failing to:

- (1) Obtain acceptable results on two consecutive blind or announced performance evaluation samples submitted by an EPA accredited vendor or the State Laboratory; or
- (2) Obtain acceptable results on two consecutive blind or announced split samples that have also been analyzed by the State Laboratory.

(c) Falsified Data. A laboratory that submits falsified data or other information may be decertified for all parameters for up to two years.

(d) Decertification Factors. In determining a period of decertification, the Director shall recognize that any harm to the natural resources of the State arising from violations of these Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Decertification for periods up to the maximum may be based on any and or a combination of the following factors to be considered:

- (1) The degree and extent of harm, or potential harm, to the natural resources of the State or to the public health, or to private property resulting from the violation;
- (2) The duration, and gravity of the violation;
- (3) The effect, or potential effect, on ground or surface water quantity or quality or on air quality;
- (4) Cost of rectifying any damage;
- (5) The amount of money saved by noncompliance;
- (6) As to violations other than submission of falsified data or other information, whether the violation was committed willfully or intentionally;
- (7) The prior record of the laboratory in complying or failing to comply with any State and Federal laboratory Rules and regulations;
- (8) The cost to the State of investigation and enforcement procedures;
- (9) Cooperation of the laboratory in discovering, identifying, or reporting the violation;
- (10) Measures the laboratory implemented to correct the violation or abate the effect of the violation, including notifying any affected clients;
- (11) Measures the laboratory implemented to correct the cause of the violation;
- (12) Any other relevant facts.

(e) Decertification Requirements.

- (1) A decertified laboratory is not to analyze samples for the decertified parameters for programs described in Rule .0802 of this Section or clients reporting to these programs.
- (2) A decertified commercial laboratory must supply written notification of the decertification to clients with Division of Water Quality reporting requirements. Within 30 days, the decertified laboratory must supply the State Laboratory with a list of clients involved and copies of the notices sent to each.
- (3) A commercial laboratory that has received a parameter decertification may make arrangements to supply analysis through another certified laboratory during any decertification periods. The decertified laboratory must supply the State Laboratory, by written notice, the name of the laboratory to be used.

- (4) A commercial laboratory decertified for all parameters cannot subcontract samples for analyses to other certified laboratories during the decertification period.
- (5) A decertified municipal or industrial laboratory must have its samples analyzed by another certified laboratory during any decertification period and supply the State Laboratory, by written notice, the name of the certified laboratory to be used.

(f) Civil Penalties. Civil penalties may be assessed against a laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rules in this Section or of a laboratory certification. A laboratory is subject to both civil penalties and decertification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A;
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0808 RECERTIFICATION

- (a) A laboratory decertified in accordance with Paragraph (a) of Rule .0807 of this Section may be recertified at the end of the decertification period by showing to the satisfaction of the State Laboratory that it has corrected the deficiency(ies).
- (b) A laboratory decertified for a parameter due to unacceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor, or on two consecutive split samples may be recertified after 60 days by reporting acceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor. Recertification samples may be requested from an EPA accredited vendor at any time, however, recertification must be requested in writing at the end of the 60 day period immediately following the date of decertification.
- (c) A laboratory decertified for submitting falsified data or other information may be recertified at the end of the decertification period by demonstrating compliance with all requirements of this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.

15A NCAC 02H .0809 RECIPROCITY

- (a) Laboratories certified under other state certification programs may be given reciprocity certification where such programs meet the requirements of this Section. In requesting reciprocity certification, laboratories shall include with the application required by Rule .0805(a) of this Section a copy of their certification and Regulation from the certifying agency.
- (b) Laboratories certified by reciprocity shall pay the fees required by Rule .0806 of this Section.
- (c) Any time that a laboratory has its certification with the reciprocal program discontinued for any reason, certification under this Section shall be terminated at the same time.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984.

15A NCAC 02H .0810 ADMINISTRATION

- (a) The Director of the Division of Water Quality, Department of Environment and Natural Resources, or his delegate, is authorized to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.
- (b) Appeals. In any case where the Director of the Division of Water Quality, Department of Environment and Natural Resources or his delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with Chapter 150B of the General Statutes.
- (c) The State Laboratory will maintain a current list of certified commercial laboratories.
- (d) Implementation of the October 1, 2001 changes to this Section.
 - (1) All requirements of the Rules in this Section are effective on the effective date of the amendments.
 - (2) Requests for the new parameters may be made by submitting a properly completed amendment form.

- (3) Laboratories subject to the amended requirements of these Rules must submit a completed application, or amendment form, within three months of the effective date of the amendments. Laboratories submitting an application or amendment form for any of the newly certifiable parameters may analyze samples for these new parameters until the State Laboratory has issued or denied certification. Fees for parameter additions requested during the initial three month period will be calculated as initial certification fees.
- (4) Laboratory facilities, not currently certified, that are performing analyses for Field Parameters only must submit an application within three months of the effective date of the amendments. After submitting an application, these laboratories may continue to analyze samples until the State Laboratory has issued or denied certification.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 150B-23;
Eff. February 1, 1976;
Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984; November 1, 1978;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002.*

15A NCAC 02H .0811 IMPLEMENTATION

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);
Eff. December 1, 1984;
Repealed Eff. July 1, 1988.*

SECTION .0900 - LOCAL PRETREATMENT PROGRAMS

15A NCAC 02H .0901 PURPOSE

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment.

(b) Copies of rules referenced in this Section may be obtained from the Division of Water Quality, Surface Water Protection Section at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/swp/ps/pret/>;
- (2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality
Offices of the Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit
Physical Address: Archdale Building, 512 N. Salisbury St.,
Raleigh, N.C. 27604
Mailing Address: 1617 Mail Service Center
Raleigh, N.C. 27699-1617;
- (3) Raleigh Regional Office
3800 Barrett Dr.
Raleigh, N.C. 27609;
- (4) Asheville Regional Office
2090 US Highway 70
Swannanoa, NC 28778;
- (5) Mooresville Regional Office
610 East Center Avenue, Suite 301
Mooresville, N.C. 28115;
- (6) Fayetteville Regional Office
Systel Bldg; Suite 714
225 Green Street

- (7) Fayetteville, N.C. 28301;
Washington Regional Office
1424 Carolina Avenue,
Washington, N.C. 27889;
- (8) Wilmington Regional Office
127 Cardinal Drive Extension,
Wilmington, N.C. 28405-3845; and
- (9) Winston-Salem Regional Office
585 Waughtown Street
Winston-Salem, N.C. 27107.

History Note: Authority G.S. 143-215.3(a)(14);
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0902 SCOPE

These Rules apply to:

- (1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR 403.3 and Rule .0903 of this Section;
- (2) POTWs and control authorities which receive wastewater from sources subject to pretreatment standards; and
- (3) Any new or existing source subject to pretreatment standards. Pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

History Note: Authority G.S. 143-215.3(a)(14);
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987.

15A NCAC 02H .0903 DEFINITION OF TERMS

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

(b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule shall apply:

- (1) "Approval Authority" means the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources, or his/her designee;
- (2) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum;
- (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility. Also see Rule .0919 of this Section and 40 CFR Part 403.17 for additional requirements;
- (4) "Commission" means the Environmental Management Commission of the North Carolina Department of Environment and Natural Resources or its successor;
- (5) "Control Authority" refers to the POTW organization if the POTW organization's pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is the control authority;
- (6) "Division" refers to the North Carolina Department of Environment and Natural Resources, Division of Water Quality;
- (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements;
- (8) "EPA" means the United States Environmental Protection Agency;
- (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may be granted under Rule .0912 of this Section and 40 CFR Part 403.13;

- (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-discharge permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable. The headworks analysis is the technical basis for deriving local limits applied to industrial users;
- (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- (12) "Industrial User" or "User" means a source of indirect discharge;
- (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment plant performed by the control authority as required by 40 CFR Part 403.8 (f)(2)(i-iii) and Rule .0905 of this Section, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of significant industrial user. Where the control authority accepts wastewater from one or more satellite POTWs, the IWS for that control authority shall address all satellite POTW service areas, unless the pretreatment program in those satellite service areas is administered by a separate control authority;
- (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the control authority's (or the POTW's if different from the control authority) NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits;
- (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes;
- (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as the Division Director determines to be necessary;
- (17) "National Categorical Pretreatment Standard" or "Categorical Standard" refers to any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to a specific category of industrial users, and which appears in 40 CFR Parts 405-471;
- (18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions;
- (19) "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR Part 403.15;
- (20) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product;
- (21) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State;
- (22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44;
- (23) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit;
- (24) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor;
- (25) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority for purposes of the pretreatment program; a pollutant of concern may include but not be limited to conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH; and any pollutant that may be identified as a source of interference, pass through, whole effluent toxicity, or sludge contamination;

- (26) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act (CWA), which is owned by a state or local government organization. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC 02T .0402. The term also means the local government organization, or municipality, as defined in Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works. In this context, the organization may be the owner of the POTW treatment plant or the owner of the collection system into which an indirect discharger discharges. This second type of POTW may be referred to as a "satellite POTW organization." For clarity, the local government may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this Section;
- (27) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;
- (28) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system or treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d);
- (29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;
- (30) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;
- (31) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;
- (32) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;
- (33) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:
- (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);
 - (B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;
 - (C) Is subject to categorical standards under 40 CFR Part 403.6 and 40 CFR Parts 405-471;
 - (D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;
 - (E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user; or
 - (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial user;
- (34) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met:
- (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);

- (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));
- (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority (or POTW, if different from the control authority), determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
- (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a pretreatment permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- (F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on compliance with compliance schedules;
- (G) Failure to accurately report noncompliance; or
- (H) Any other violation or group of violations that the control authority or POTW determines will adversely affect the operation or implementation of the local pretreatment program;

Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D), or (H) of this Subparagraph shall also be in SNC;

- (35) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources;
- (36) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR Part 403.16;
- (37) "Waste reduction" means source reduction and recycling;
- (38) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW; and
- (39) "Waters of the State" are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.

History Note: Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
 Eff. March 28, 1980;
 Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS

(a) The regulations regarding pretreatment program development by the control authority promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(a) through 403.8(e) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

(b) The Division may allow a control authority having a combined permitted flow less than or equal to two million gallons per day and less than four significant industrial users to develop and implement a modified pretreatment program that encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Division Director. In making the decision to allow modified pretreatment program development and implementation, the Division Director may consider factors including percent industrial flow, industrial waste characteristics, compliance status of the facility, and the potential for industrial growth.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;

Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS

Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(f) and (g) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3. In general, the implementation of a pretreatment program involves the updating of the sewer use ordinance (SUO); implementation of industrial waste survey (IWS) activities; updating of the headworks analysis (HWA), or technical basis for local limits; implementation of the long or short term monitoring plan (LTMP/STMP); implementation of compliance activities, including sampling and inspection of significant industrial users; maintenance of control authority organization description; maintenance of staffing and funding information; implementation of the enforcement response plan (ERP), and reporting to the Division on pretreatment program activities.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; 153A-274; 153A-275; 160A-311; 160A-312;
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL

(a) Except where in conflict with any part of this Section, the regulations regarding the contents of pretreatment programs submitted for approval and the contents of a request to revise national categorical pretreatment standards, promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.9 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

(b) In addition to the contents of a control authority pretreatment program submission described in Paragraph (a) of this Rule, the program submission shall contain:

- (1) a sewer use ordinance (SUO) providing the legal authority for implementing the pretreatment program, along with an attorney's statement, as required by 40 CFR Part 403.8 (f)(1) and Rule .0905 of this Section. Where the control authority accepts wastewater from one or more satellite POTWs and is the control authority within the satellite POTW's service area, the attorney's statement for that control authority shall document the interlocal agreements (ILAs) authorized by G.S. 153A-278 and 160A-460 et seq and SUO sections that establish the control authority's authority for regulation within all satellite POTW services areas which are tributary to the control authority's POTW. Where a satellite POTW serves as the control authority within its service area, the attorney's statement for that control authority shall document the ILAs and SUO sections that establish the satellite POTW's authority for regulation within its service area and the requirements for the satellite POTW to implement its pretreatment program in accordance with the downstream POTW's SUO and the ILA. In either case, where the POTW organizations have other written procedures to outline responsibilities not covered by the ILA or SUO, the applicable attorney's statements shall also include documentation of these procedures and the source of their enforceability;
- (2) an industrial waste survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule .0905(b) of this Section;
- (3) a monitoring plan to provide POTW site-specific data for the HWA and subsequent technical evaluations of local limits to satisfy the requirements of 40 CFR Part 122.21(j). Modified pretreatment programs developed under Rule .0904(b) of this Section shall be allowed to implement a short term monitoring plan (STMP);
- (4) a headworks analysis (HWA) and supporting documentation, including POTW site-specific and relevant literature data, upon which to base industrial user-specific effluent limits and other local limits for prohibited pollutants (as defined in 40 CFR Parts 403.5(a) and (b) and Rule .0909 of this Section);
- (5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance procedures, which will implement the requirements of 40 CFR Parts 403.8(f) and 403.12, and Rules .0905 and .0908 of this Section;

- (6) draft industrial user pretreatment permits for significant industrial users as required by 40 CFR Parts 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation outlined in Rules .0916 and .0917 of this Section;
- (7) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1; procedures for approving construction shall include issuance of authorization to construct, as appropriate;
- (8) an enforcement response plan (ERP) as required by 40 CFR Parts 403.8(f)(5) and 403.9(b)(1)(ii) for identifying violations of and enforcing specific local limits and other pretreatment requirements as required by and specified in 40 CFR Parts 403.5 and 403.6 and Rules .0909 and .0910 of this Section;
- (9) a brief description (including organization charts) of the control authority which will administer the pretreatment program. Where more than one POTW organization is involved in the POTW wastewater collections or treatment system, the description shall address all the agencies, including identification of which party will receive Industrial User applications for new and changed discharges and how the parties will communicate on significant industrial user determinations;
- (10) a description of funding levels and full- and part-time manpower available to implement the program;
- (11) a description of data management procedures for compiling and managing compliance, LTMP/STMP, and any other pretreatment-related monitoring data, including documentation of approval of electronic reporting procedures as required under 40 CFR Part 3 if applicable; and
- (12) a request for pretreatment program approval as required by 40 CFR Part 403.9 and this Section.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; Eff. March 28, 1980; Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL

- (a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as follows:
- (1) Except where in conflict with any part of this Section, the approval procedures for control authority pretreatment programs and applications for removal credit authorization promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3; and
 - (2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and .0917 of this Section, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the POTW;
- (b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as follows:
- (1) the control authority shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other documents as the Division Director determines to be necessary under the circumstances. The attorney's statement may consist merely of a verification that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the control authority, if that is the case;
 - (2) whenever the Division Director determines that the proposed program modifications are substantial as defined in 40 CFR Part 403.18(b), the Division shall issue public notice and provide an opportunity for public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by the control authority are deemed sufficient notice;
 - (3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of Agreement between the Division and the EPA; and
 - (4) Except as specified below, a pretreatment program revision shall become effective upon written approval of the Division Director:
 - (A) Pretreatment permits: See Rule .0917(d); and

- (B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list in which to make general comments upon, objections to or recommendations with respect to the request. Unless such an objection or request for more information is made, the request shall be final and binding;
- (c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies with requirements of this Section and the control authority fails to take corrective action. The following procedures apply when the Division Director determines that program withdrawal may be needed:
- (1) The Division Director shall give the control authority 180 days notice of the program withdrawal;
 - (2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports and permit applications) which is necessary for the Division to administer the pretreatment program;
 - (3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate the control authority plan and shall identify any additional information needed by the Division for program administration or identify any other deficiencies in the plan; and
 - (4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the control authority;
- (d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule. Approval shall become effective upon written approval of the Division Director.
- (e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW. When required by the Division to return to active status, a control authority may be required to update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules. The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of discharge of the significant industrial user.
- (f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified pretreatment program.

*History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.*

15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS

- (a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(g) and 403.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.
- (b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:
- (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;
 - (2) a pretreatment program summary on forms or in a format provided by the Division;
 - (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;
 - (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
 - (5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, including, but not limited to, significant industrial user

compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;

(c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.

(d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW and shall comply with Rule .0907 of this Section.

(e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each significant industrial user as follows:

- (1) Except as specified below, a minimum of once each year for all permit-limited parameters including flow:
 - (A) Independent monitoring of the industrial user by the control authority is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply where the industrial user submits the required documentation for that certification or procedure, even if the industrial user chooses to monitor in addition to using certification or other alternative procedures;
 - (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited parameters at a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria under 40 CFR Part 403.12(e)(3) (Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and
 - (C) For categorical parameters with monitoring waived under 40 CFR Part 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit (40 CFR Part 403.8(f)(2)(v)(A)); and
- (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority shall collect and analyze for the required parameters and, if applicable, in accordance with categorical standards;

(f) Records Retention:

- (1) Control authorities and industrial users shall retain for three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW;
- (2) Other documents required by any portion of this Section (including supporting information) for other pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall be retained for three years after the document has expired or been updated or replaced;
- (3) A summary of all significant industrial user effluent monitoring data reported to the control authority by the industrial user or obtained by the control authority shall be maintained on forms or in a format provided by the Division for review by the Division; and
- (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.

(g) Forms or format deviating from Division provided forms or format for all documents and supporting information required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a computer-compatible format.

(h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as the control authority, all information required to be reported to the industrial user's control authority by this Section shall also be submitted to the POTW treatment plant governmental organization.

(i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3, and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

The regulations regarding national prohibited pretreatment standards and local limits development and enforcement promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.5 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS

The regulations regarding national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.6 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0911 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

History Note: Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14);
Eff. March 28, 1980;
Amended Eff. December 1, 1984;
Repealed Eff. October 1, 1987.

15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS

The regulations regarding variances from national categorical pretreatment standards for fundamentally different factors promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.13 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 143-215.3(e); 150B-21.6;
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION

(a) Information and data provided by an industrial user to the POTW Director pursuant to this Section, identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Information and data provided by an industrial user to the Division Director shall be subject to the processes set forth in G.S. 143-215.3C.

(c) Information provided by an industrial user to a control authority that is determined to be entitled to confidential treatment shall be made available upon written request to the Division or any state agency for uses related to the pretreatment program, the National Pollutant Discharge Elimination System (NPDES) permit, collection system permit, stormwater permit, or non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

(d) Information and data received by the Division or other state agency under Paragraph (c) of this Rule shall be subject to the processes set forth in G.S. 143-215.3C.

History Note: Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1; 143-215.3; 143-215.3C;
Eff. March 28, 1980;
Amended Eff. April 1, 2011; October 1, 1987.

15A NCAC 02H .0914 UPSET PROVISION

The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.16 is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

15A NCAC 02H .0915 NET/GROSS CALCULATION

The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.15 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

15A NCAC 02H .0916 PRETREATMENT PERMITS

(a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility shall obtain a permit from the control authority.

(b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this Subchapter.

(c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:

- (1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule shall be required to complete, sign and submit to the control authority a permit application. Application fees and procedures may be prescribed by the control authority. All pretreatment permit applications shall include as a minimum:
 - (A) name of industrial user;
 - (B) address of industrial user;
 - (C) standard industrial classification (SIC) code(s) or expected classification and industrial user category;
 - (D) wastewater flow;
 - (E) types and concentrations (or mass) of pollutants contained in the discharge;
 - (F) major products manufactured or services supplied;
 - (G) description of existing on-site pretreatment facilities and practices;
 - (H) locations of discharge points;
 - (I) raw materials used or stored at the site;
 - (J) flow diagram or sewer map for the industrial user;
 - (K) number of employees;
 - (L) operation and production schedules; and
 - (M) description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);
- (2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number of days prior to expiration by which the application shall be filed shall be established by the control authority;
- (3) Review and Evaluation:
 - (A) The POTW Director is authorized to accept applications for the Commission and shall refer all applications to the control authority staff for review and evaluation;
 - (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required;

- (C) The control authority staff shall include documentation of the most recent on site inspection of the industrial user and any existing wastewater pretreatment system as part of the permit record for new and renewed permits; and
- (D) The control authority staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the control authority staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing and transmit them to the industrial user:
 - (i) proposed effluent limitations for those pollutants proposed to be limited;
 - (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
 - (iii) a description of any other proposed special conditions which will have significant impact upon the discharge described in the application;
 The control authority staff shall organize the determinations made into a pretreatment permit;
- (4) Permit supporting documentation. The control authority staff shall prepare the following documents for all significant industrial user permits:
 - (A) An allocation table (AT) listing permit information for all significant industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format provided by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised;
 - (B) The basis, or rationale, for the pretreatment limitations, including documentation of categorical determination, including documentation of any calculations used in applying categorical standards; and
 - (C) Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2);
- (5) Final Action on Permit Applications:
 - (A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by Rules .0917(d) and .0922 of this Section, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;
 - (B) The POTW Director is authorized to:
 - (i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
 - (ii) issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;
 - (iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;
 - (iv) deny a permit application;
 - (v) issue permits to industrial users not identified as significant industrial users using procedures prescribed by the control authority; and
 - (vi) require industrial users to develop a waste reduction plan and implement waste reduction techniques and technologies;
 - (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years; and
 - (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his/her permit application. Notifications of denial shall specify the reasons for the denial and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit;
- (6) Modification and Revocation of Permits:
 - (A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or part as outlined in the control authority's sewer use ordinance; and
 - (B) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows:

- (i) changes in the ownership of the discharge when no other change in the permit is indicated;
 - (ii) a single modification of any compliance schedule not in excess of four months;
 - (iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational; or
 - (iv) modifications of the monitoring requirements in the permit; and
- (7) Permit effective dates and modification effective dates shall not be retroactive.

*History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.3(e);
Eff. October 1, 1987;
Amended Eff. April 1, 2011; November 1, 1994.*

15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW

- (a) Upon issuance, each control authority shall transmit to the Division copies of all issued significant industrial user pretreatment permits.
- (b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting information listed below. Permit modification submissions for significant industrial users shall include updated versions of this supporting information listed below as applicable to that modification:
- (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;
 - (2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and
 - (3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;
- (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making the decision to waive these requirements, the Division Director may consider factors including but not limited to training levels of control authority staff, quality of previous pretreatment permit submissions, percent maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste characteristics, and compliance status of the POTW and its respective environmental permits.
- (d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection or request for more information in accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.
- (e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff shall set forth in writing and transmit to the control authority:
- (1) A statement of the reasons for the objection, including the rules or regulations that support the objection; and
 - (2) The actions which shall be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by the Division;
- (f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the following grounds:
- (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
 - (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by state statute or by the control authority's approved pretreatment program;
 - (3) a finding made by the control authority in connection with the pretreatment permit which misinterprets any categorical standard or pretreatment regulation or misapplies them to the facts; and
 - (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or sampling by the control authority and the industrial user are, in the judgment of the Division Director, inadequate to assure compliance with permit conditions or applicable pretreatment standards;
- (g) Prior to notifying the control authority of an objection, the Division Director:
- (1) shall consider all data transmitted pursuant to Rules.0916 and .0917 of this Section;
 - (2) may, if more information is needed to determine whether the permit is adequate, request the control authority to make available to the Division staff the complete record of permit proceedings, or any portions of the record that the Division Director determines are necessary for review. Requests shall be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has obtained the requested records or portions of the record, the Division staff shall have an additional 30 days for review; and

- (3) may, to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection; and
- (h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division when this time expires.

History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e);
Eff. October 1, 1987;
Amended Eff. April 1, 2011; November 1, 1994.

15A NCAC 02H .0918 LOCAL LAW

Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North Carolina General Statutes, or the rules of this Section.

History Note: Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275;
160A-311; 160A-312;
Eff. November 1, 1994.

15A NCAC 02H .0919 BYPASS

The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.17 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;
Eff. November 1, 1994;
Amended Eff. March 1, 2011.

15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE

(a) Upon classification of pretreatment facilities permitted under this Section and upon development of specific certification and training programs for operators of classified facilities, the industrial user shall designate an operator in responsible charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section and classified under the rules of the Water Pollution Control System Operators Certification Commission (Subchapter 08G of these Rules), the operator in responsible charge, or a back-up operator when appropriate, shall operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.

(c) Copies of rules referenced in this Rule may be obtained at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/admin/tacu>; and
- (2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality
Offices of the Technical Assistance and Certification Unit (TACU)
Physical Address: 219 North East Street
Raleigh, N.C. 27601
Mailing Address: 1618 Mail Service Center
Raleigh, N.C. 27699-1618.

History Note: Authority G.S. 143-215.3;
Eff. November 1, 1994;
Amended Eff. April 1, 2011.

15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT

The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.7 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at http://cfpub1.epa.gov/npdes/home.cfm?program_id=3.

History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;
Eff. November 1, 1994;
Amended Eff. March 1, 2011.

15A NCAC 02H .0922 HEARINGS

(a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S. 162A-81 for metropolitan sewerage districts. This shall include:

- (1) providing industrial users assessed civil penalties by the control authority for violations of its pretreatment program with the opportunity to request review of the penalty in accordance with the provisions of G.S. 143-215.6A(k); and
- (2) providing industrial users the opportunity to request review of other actions taken by the control authority to administer and enforce its pretreatment program. Such control authority actions may include denial or termination of a pretreatment permit or other permission to discharge, issuance of a permit or other permission to discharge subject to conditions the industrial users deems unacceptable, and the issuance of an administrative order subject to conditions the industrial users deems unacceptable. The opportunity to request review may include the right to request a review of a control authority action with the local government as established in that local government's SUO, or to request a review by the superior court having local jurisdiction.

(b) If the control authority elects to provide industrial users with the opportunity for local government reviews under Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the review process. These procedures may include the number of days after receipt of an action by which the industrial user must request the review, the contents or form of the request, and which party or parties will conduct local government hearings.

History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3); 143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1; 162A-81;
Eff. April 1, 2011.

SECTION .1000 - STORMWATER MANAGEMENT

15A NCAC 02H .1001 STORMWATER MANAGEMENT POLICY

The rules in this Section set forth the requirements for application and issuance of permits for stormwater management systems in accordance with G.S. 143-215.1(d) and 15A NCAC 2H .0200. These requirements to control pollutants associated with stormwater runoff apply to development of land for residential, commercial, industrial, or institutional use but do not apply to land management activities associated with agriculture or silviculture unless specifically addressed in special supplemental classifications and management strategies adopted by the Commission.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1);
Eff. January 1, 1988;
Amended Eff. September 1, 1995.

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

- (1) "Built-upon Area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck or the water area of a swimming pool.
- (2) "CAMA Major Development Permits" means those permits or revised permits required by the Coastal Resources Commission as set forth in 15A NCAC 07J Sections .0100 and .0200.
- (3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- (4) "Coastal Counties" are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (5) "Curb Outlet System" means curb and gutter installed in a development that meets the low density criteria set forth in Rule .1003(d)(1) of this Section with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.
- (6) "Development" means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9) "General Permit" means a permit issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.
- (10) "Infiltration Systems" means stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.
- (11) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit and takes the place of the application used with individual permits.
- (12) "Off-site Stormwater Systems" means stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.
- (13) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (14) "On-site Stormwater Systems" means the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (15) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics.
- (16) "Redevelopment" means any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development. Stormwater controls shall not be allowed where otherwise prohibited.
- (17) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).
- (18) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- (19) "Sedimentation and Erosion Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or delegated authority in accordance with G.S. 113A-57.
- (20) "Stormwater" is defined in G.S. 143-213(16a).
- (21) "Stormwater Collection System" means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring, or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.

- (22) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- (23) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- (24) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.
- (25) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and that provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.
- (26) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and boat storage areas are not water dependent uses.
- (27) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.

History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. January 1, 1988; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); July 3, 2012; December 1, 1995; September 1, 1995; Temporary Amendment Eff. March 28, 2014 [See S.L. 2014-120, s. 45]; Amended Eff. January 1, 2015.

15A NCAC 02H .1003 STORMWATER MANAGEMENT: COVERAGE: APPLICATION: FEES

(a) The intent of the Commission is to achieve the water quality protection which low density development near sensitive waters provides. To that end, the Director, by applying the standards in this Section shall cause development to comply with the antidegradation requirements specified in 15A NCAC 2B .0201 by protecting surface waters and highly productive aquatic resources from the adverse impacts of uncontrolled high density development or the potential failure of stormwater control measures.

(b) To ensure the protection of surface waters of the State in accordance with G.S. 143-214.7, a permit is required in accordance with the provisions of this Section for any development activities which require a CAMA major development permit or a Sedimentation/Erosion Control Plan and which meet any of the following criteria:

- (1) development activities located in the 20 coastal counties as defined in Rule .1002(4) of this Section;
- (2) development activities draining to Outstanding Resource Waters (ORW) as defined in 15A NCAC 2B .0225; or
- (3) development activities within one mile of and draining to High Quality Waters (HQW) as defined in 15A NCAC 2B .0101(e)(5).

Projects under a common plan of development shall be considered as a single project and shall require stormwater management in accordance with this Section. Local governments with delegated Sedimentation/Erosion Control Programs often implement more stringent standards in the form of lower thresholds for land area disturbed. In these situations, the requirements of this Rule apply only to those projects that exceed the state's minimum area of disturbance as outlined in G.S. 113A-57. Specific permitting options, including general permits for some activities, are outlined in Paragraph (d) of this Rule.

(c) Development activity with a CAMA major development permit or a Sedimentation/Erosion Control Plan approved prior to January 1, 1988 are not required to meet the provisions of these Rules unless changes are made to the project which require modifications to these approvals after January 1, 1988.

(d) Projects subject to the permitting requirements of this Section may be permitted under the following stormwater management options:

- (1) **Low Density Projects:** Projects permitted as low density projects must be designed to meet and maintain the applicable low density requirements specified in Rules .1005 through .1007 of this Section. The Division shall review project plans and assure that density levels meet the applicable low density

requirements. The permit shall require recorded deed restrictions and protective covenants to ensure development activities maintain the development consistent with the plans and specifications approved by the Division.

- (2) High Density Projects: Projects permitted as high density projects must be designed to meet the applicable high density requirements specified in Rules .1005 through .1007 of this Section with stormwater control measures designed, operated and maintained in accordance with the provisions of this Section. The permit shall require recorded deed restrictions and protective covenants to ensure development activities maintain the development consistent with the plans and specifications approved by the Division. Stormwater control measures and operation and maintenance plans developed in accordance with Rule .1008 of this Section must be approved by the Division. In addition, NPDES permits for stormwater point sources may be required according to the provisions of 15A NCAC 2H .0126.
- (3) Other Projects: Development may also be permitted on a case-by-case basis if the project:
 - (A) controls runoff through an off-site stormwater system meeting provisions of this Section;
 - (B) is redevelopment which meets the requirements of this Section to the maximum extent practicable;
 - (C) otherwise meets the provisions of this Section and has water dependent structures, public roads and public bridges which minimize built-upon surfaces, divert stormwater away from surface waters as much as possible and employ other best management practices to minimize water quality impacts.
- (4) Director's Certification: Projects may be approved on a case-by-case basis if the project is certified by the Director that the site is situated such that water quality standards and uses are not threatened and the developer demonstrates that:
 - (A) the development plans and specifications indicate stormwater control measures which shall be installed in lieu of the requirements of this Rule; or
 - (B) the development is located such a distance from surface waters that impacts from pollutants present in stormwater from the site shall be effectively mitigated.
- (5) General Permits: Projects may apply for permit coverage under general permits for specific types of activities. The Division shall develop general permits for these activities in accordance with Rule .1013 of this Section. General Permit coverage shall be available to activities including, but not limited to:
 - (A) construction of bulkheads and boat ramps;
 - (B) installation of sewer lines with no proposed built-upon areas;
 - (C) construction of an individual single family residence; and
 - (D) other activities that, in the opinion of the Director, meet the criteria in Rule .1013 of this Section.

Development designed to meet the requirements in Subparagraphs (d)(1) and (d)(3) of this Paragraph must demonstrate that no areas within the project site are of such high density that stormwater runoff threatens water quality.

(e) Applications: Any person with development activity meeting the criteria of Paragraph (b) of this Rule shall apply for permit coverage through the Division. Previously issued Stormwater Certifications (issued in accordance with stormwater management rules effective prior to September 1, 1995) revoked due to certification violations must apply for permit coverage. Stormwater management permit applications, project plans, supporting information and processing fees shall be submitted to the appropriate Division of Environmental Management regional office. A processing fee, as described in Paragraph (f) of this Rule, must be submitted with each application. Processing fees submitted in the form of a check or money order shall be made payable to N.C. Department of Environment, Health, and Natural Resources. Applications which are incomplete or not accompanied by the processing fee may be returned. Permit applications shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his authorized representative;
- (2) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state or other public entity by either a principal executive officer, ranking official or other duly authorized employee.

The signature of the consulting engineer or other agent shall be accepted on the application only if accompanied by a letter of authorization.

(f) Permit Fees:

- (1) For every application for a new or revised permit under this Section, a nonrefundable application processing fee in the amount stated in Subparagraph (f)(2) of this Paragraph shall be submitted at the time of application.

- (A) Each permit application is incomplete until the application processing fee is received;
 - (B) No processing fee shall be charged for modifications of permits when initiated by the Director;
 - (C) A processing fee of forty dollars (\$40.00) shall be charged for name changes;
 - (D) No processing fee shall be required for name changes associated with the initial transfer of property from the developer to property owner or responsible party. Any subsequent changes in ownership shall be subject to the name change processing fee in Part (C) of this Paragraph.
- (2) Schedule of Fees

Permit Application Processing Fee

	New Applications/ Modifications/ Rate Renewal	Timely Renewals Without Modifications
Low Density	\$225	N/A
High Density	385	225
Other	225	N/A
Director's Certification	350	N/A
General Permits	50	N/A

(g) Supporting Documents and Information. This Paragraph outlines those supporting documents and information that must be submitted with stormwater applications. Additional information may also be applicable or required. The applicant shall attempt to submit all necessary information to describe the site, development and stormwater management practices proposed.

The following documents and information shall be submitted with stormwater applications:

- (1) two sets of detailed plans and specifications for the project;
- (2) plans and specifications must be dated and sealed as outlined in Rule .1008(j) of this Section and show the revision number and date;
- (3) general location map showing orientation of the project with relation to at least two references (numbered roads, named streams/rivers, etc.) and showing the receiving water (a USGS map preferable);
- (4) topographic map(s) of the project area showing original and proposed contours and drainage patterns;
- (5) delineation of relevant boundaries including drainage areas, seasonal high water table, wetlands, property/project boundaries and drainage easements;
- (6) existing and proposed built-upon area including roads, parking areas, buildings, etc.;
- (7) technical information showing all final numbers, calculations, assumptions, drawing and procedures associated with the stormwater management measures including but not limited to: built-upon area, runoff coefficients, runoff volume, runoff depth, flow routing, inlet and outlet configuration (where applicable), other applicable information as specified;
- (8) operation and maintenance plan signed by responsible party;
- (9) recorded deed restriction and protective covenants. As an alternative proposed deed restriction and protective covenants and a signed agreement to provide final recorded articles shall be accepted when final documents are not available at the time of submittal.

(h) Permit Issuance and Compliance: Stormwater management permits shall be issued in a manner consistent with the following:

- (1) Stormwater management permits issued for low density projects shall not require permit renewal.
- (2) Stormwater management permits issued for projects that require the construction of engineered stormwater control measures shall be issued for a period of time not to exceed 10 years. Applications for permit renewals shall be submitted 180 days prior to the expiration of a permit and must be accompanied by the processing fee described in Paragraph (f) of this Rule.
- (3) Stormwater management permits shall be issued to the developer or owner and shall cover the entire master plan of the project ("stormwater master plan permit"). The master plan permit shall include specifications for stormwater management measures associated with each individual lot or property within the project.
- (4) Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of this Section is subject to enforcement procedures as set forth in G.S. 143, Article 21.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1(d); 143-215.3(a)(1);
Eff. January 1, 1988;
Amended Eff. December 1, 1995; September 1, 1995.

15A NCAC 02H .1004 STATEWIDE STORMWATER GUIDELINES

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.8A;
Eff. January 1, 1988;
Repealed Eff. September 1, 1995.

15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES

(a) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in Items (1), (2), and (3) below. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006.

- (1) Development Near Outstanding Resource Waters (ORW). Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of Rule .1007 of the Section and shall be permitted as follows:
 - (A) Low Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:
 - (i) The development has a built upon area of 12 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
 - (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.
 - (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.
 - (B) High Density Option. Development shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:
 - (i) The development has a built upon area of greater than 12 percent.
 - (ii) The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126.
 - (iii) The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development (LID) stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the greater of, runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the

predevelopment and postdevelopment conditions for a one-year, 24-hour storm. Wet detention ponds may be used as a stormwater control system to meet the requirements of this Subparagraph (1)(B)(iii), provided that the stormwater control system fully complies with the requirements of Subparagraph (1)(B). If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of Subparagraph (1)(B).

- (iv) Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of Class SA waters.
 - (v) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.
- (C) Stormwater Discharges Prohibited. All development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:
- (i) Infiltration of the stormwater runoff from the design storm as described in Subparagraph (1)(B)(iii).
 - (ii) Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in Subparagraph (1)(B)(iii). Notwithstanding the other requirements of this Rule, the infiltration mandated in this Subparagraph (1)(C)(ii) does not require a minimum separation from the seasonal high-water table.
 - (iii) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of Subparagraph (1)(C).
- (D) Limitation on the Density of Development. Development shall be limited to a built upon area of 25 percent or less.
- (2) Development Near Class SA Waters. Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of Subparagraphs (1)(A), (B), and (C). The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.
- (3) Other Coastal Development. Development activities within the Coastal Counties except those areas described in Subparagraphs (1) and (2) of this Paragraph shall meet all of the following requirements:
- (A) Low-Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:
 - (i) The development has a built upon area of 24 percent or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.
 - (ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.
 - (iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

- (B) High-Density Option. Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:
- (i) The development has a built upon area of greater than 24 percent.
 - (ii) The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with Rule .1008 of this Section.
 - (iii) Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.
 - (iv) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(b) Requirements for Limited Residential Development in Coastal Counties. For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than 12 percent, that will add more than 10,000 square feet of built upon area, and that does not require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

- (1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.
- (3) Install any other stormwater best management practice that meets the requirements of Rule .1008 of this Section to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

(c) Requirements for Structural Stormwater Controls. Structural stormwater controls required under this Rule shall meet all of the following requirements:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids.
- (2) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in Rule .1008(c) of this Section.
- (5) For structural stormwater controls that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the Division may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in Rule .1008(h) of this Section. No minimum separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

(d) Wetlands. Developments regulated by this Rule that have wetlands inside of, or adjacent to, the development must meet the following requirements:

- (1) Areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.
- (2) Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

(e) Vegetative Buffer. Developments permitted under Paragraph (a) shall contain a 50 foot wide vegetative buffer, as defined in Rule .1002(22) of this Section, for new development activities and a 30 foot wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

(f) Exemptions From Vegetative Buffer Requirements. The following activities are exempt from the vegetative buffer requirements of Paragraph (e) of this Rule:

- (1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g),
- (2) Development in a new urban waterfront area that meets the requirements of S.L. 2004-117,
- (3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H),
- (4) Development of upland marinas that have received or are required to secure a CAMA Major Development Permit.

(g) Compliance with Other Rules. In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.

(h) Exclusions. The requirements of this Rule shall not apply to any of the following:

- (1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.
- (2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of this Rule that were effective at the time of the original issuance of the following authorizations:
 - (A) State Stormwater Permit issued under the provisions of this Rule.
 - (B) Stormwater Certification issued pursuant to Rule .1000 of this Section prior to 1 December 1995.
 - (C) A CAMA Major Development Permit.
 - (D) 401 Certification that contains an approved Stormwater Management Plan.
 - (E) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.
 - (F) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
 - (G) A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:
 - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.
 - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.
 - (H) A vested right to the development pursuant to common law.
- (3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.
- (4) Development activities for which a complete Stormwater Permit Application has been accepted by the Division prior to October 1, 2008, shall be regulated by the provisions and requirements of this Rule that were effective at the time that this application was accepted as complete by the Division. For purposes of this Rule, a Stormwater Permit Application is deemed accepted as complete by the Division when the application is assigned a permit number in the Division's Basinwide Information Management System.
- (5) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of this Rule that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this Rule, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within

the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

- (6) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Rule.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);
Eff. September 1, 1995;
This Rule is superseded by S.L. 2008-211 Eff. October 1, 2008;
Amended Eff. March 1, 2013; July 3, 2012.*

15A NCAC 02H .1006 STORMWATER REQUIREMENTS: HIGH QUALITY WATERS

All development activities which require a stormwater management permit under Rule .1003 of this Section and are within one mile of and draining to waters classified as High Quality Waters (HQW) shall manage stormwater runoff in accordance with the provisions outlined in this Rule. More stringent stormwater management measures may be required on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

- (1) All waters classified as WS-I or WS-II (15A NCAC 2B .0212 and .0214) and all waters located in the coastal counties (Rule .1005 of this Section) are excluded from the requirements of this Rule since they already have requirements for stormwater management.
- (2) Low Density Option: Development shall be permitted pursuant to Rule .1003(c)(1) of this Section if the development has:
 - (a) built-upon area of 12 percent or less or proposes single family residential development on lots of one acre or greater;
 - (b) stormwater runoff transported primarily by vegetated conveyances; conveyance system shall not include a discrete stormwater collection system as defined in Rule .1002 of this Section;
 - (c) a 30 foot wide vegetative buffer.
- (3) High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(c)(2) of this Section if stormwater control systems meet the following criteria:
 - (a) control systems must be wet detention ponds or alternative stormwater management systems designed in accordance with Rule .1008 of this Section;
 - (b) control systems must be designed to control runoff from all surfaces generated by one inch of rainfall.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);
Eff. September 1, 1995;
Amended Eff. December 1, 1995.*

15A NCAC 02H .1007 STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS

All development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to waters classified as Outstanding Resource Waters (ORW) shall manage stormwater runoff in accordance with the provisions of this Rule. Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified as Outstanding Resource Waters (ORW). Stormwater management strategies to protect resource values of waters classified as ORW shall be developed on a site specific basis during the proceedings to classify these waters as ORW. The requirements of this Rule serve as the minimum conditions that must be met by development activities. More stringent stormwater management measures may be required on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

- (1) Freshwater ORWs: Development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to freshwaters classified as ORW shall manage stormwater runoff as follows:
 - (a) Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development has:

- (i) built-upon area of 12 percent or less or proposes single family residential development on lots of one acre or greater;
 - (ii) stormwater runoff transported primarily by vegetated conveyances; conveyance system shall not include a discrete stormwater collection system as defined in Rule .1002 of this Section; and
 - (iii) a 30 foot wide vegetative buffer.
- (b) High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if stormwater control systems meet the following criteria:
 - (i) control systems must be wet detention ponds or alternative stormwater management systems designed in accordance with Rule .1008 of this Section; and
 - (ii) control systems must be designed to control runoff from all surfaces generated by one inch of rainfall.
- (2) Saltwater ORWs: Development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to saltwaters classified as ORW shall manage stormwater runoff as follows:
 - (a) Within 575 feet of the mean high water line of designated ORW areas, development activities shall comply with the low density option as specified in Rule .1005(2)(a) of this Section.
 - (b) Projects draining to saltwaters classified as ORW that impact the Areas of Environmental Concern (AEC), determined pursuant to G.S. 113A-113, shall delineate the ORW AEC on the project plans and conform to low density requirements as specified in Rule .1005(2)(a) of this Section within the ORW AEC.
 - (c) After the Commission has received a request to classify Class SA waters as ORW and given permission to the Director to schedule a public hearing to consider reclassification and until such time as specific stormwater design criteria become effective, only development which meets the requirements of Rule .1003(d)(3)(A), (B) and (C) and Rule .1005(2)(a) of this Section shall be approved within 575 feet of the mean high water line of these waters.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);
Eff. September 1, 1995.

15A NCAC 02H .1008 DESIGN OF STORMWATER MANAGEMENT MEASURES

(a) Structural Stormwater Control Options. Stormwater control measures which may be approved pursuant to this Rule and which shall not be considered innovative include:

- (1) Stormwater infiltration systems including infiltration basins/ponds, swales, and vegetative filters;
- (2) Wet detention ponds; and
- (3) Devices approved in accordance with Paragraph (h) of this Rule.

All stormwater management structures are subject to the requirements of Paragraph (c) of this Rule.

(b) Innovative Systems. Innovative measures for controlling stormwater which are not well established through actual experience may be approved on a demonstration basis under the following conditions:

- (1) There is a reasonable expectation that the control measures will be successful;
- (2) The projects are not located near High Quality Waters (HQW);
- (3) Monitoring requirements are included to verify the performance of the control measures; and
- (4) Alternatives are available if the control measures fail and shall be required when the Director determines that the system has failed.

(c) General Engineering Design Criteria For All Projects.

- (1) The size of the system must take into account the runoff at the ultimate built-out potential from all surfaces draining to the system, including any off-site drainage. The storage volume of the system shall be calculated to provide for the most conservative protection using runoff calculation methods described on pages A.1 and A.2 in "Controlling Urban Runoff: A Practical Manual For Planning And Designing Urban BMPs" which is hereby incorporated by reference not including amendments. This document is available through the Metropolitan Washington (D.C.) Council of Governments at a cost of forty dollars (\$40.00). This method is also described in the Division's document "An Overview of Wet Detention Basin Design."

Other engineering methods may be approved if these methods are shown to provide for equivalent protection;

- (2) All side slopes being stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to vertical);
- (3) All stormwater management structures shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right-of-way. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management structures;
- (4) Vegetative filters designed in accordance with Paragraph (f) of this Rule are required from the overflow of all infiltration systems and discharge of all stormwater wet detention ponds. These filters shall be at least 30 feet in length, except where a minimum length of 50 feet is required in accordance with Rule .1005(2)(b)(iii) of this Section;
- (5) Stormwater controls shall be designed in accordance with the provisions of this Section. Other designs may be acceptable if these designs are shown by the applicant, to the satisfaction of the Director, to provide equivalent protection;
- (6) In accordance with the Antidegradation Policy as defined in 15A NCAC 2B .0201, additional control measures may be required on a case-by-case basis to maintain and protect, for existing and anticipated uses, waters with quality higher than the standards; and
- (7) Stormwater control measures used for sedimentation and erosion control during the construction phase must be cleaned out and returned to their designed state.

(d) Infiltration System Requirements. Infiltration systems may be designed to provide infiltration of the entire design rainfall volume required for a site or a series of successive systems may be utilized. Infiltration may also be used to pretreat runoff prior to disposal in a wet detention ponds. The following are general requirements:

- (1) Infiltration systems shall be a minimum of 30 feet from surface waters and 50 feet from Class SA waters;
- (2) Infiltration systems shall be a minimum distance of 100 feet from water supply wells;
- (3) The bottom of infiltration systems shall be a minimum of two feet above the seasonal high water table;
- (4) Infiltration systems must be designed such that runoff in excess of the design volume by-passes the system and does not flush pollutants through the system;
- (5) Infiltration systems must be designed to completely draw down the design storage volume to the seasonal high water table under seasonal high water conditions within five days and a hydrogeologic evaluation may be required to determine whether the system can draw down in five days;
- (6) Soils must have a minimum hydraulic conductivity of 0.52 inches per hour to be suitable for infiltration;
- (7) Infiltration systems must not be sited on or in fill material, unless approved on a case-by-case basis under Paragraph (h) of this Rule;
- (8) Infiltration systems may be required on a case-by-case basis to have an observation well to provide ready inspection of the system;
- (9) If runoff is directed to infiltration systems during construction of the project, the system must be restored to design specifications after the project is complete and the entire drainage area is stabilized.

(e) Wet Detention Pond Requirements. These practices may be used as a primary treatment device or as a secondary device following an infiltration system. Wet detention ponds shall be designed for a specific pollutant removal. Specific requirements for these systems are as follows:

- (1) The design storage volume shall be above the permanent pool;
- (2) The discharge rate from these systems following the one inch rainfall design storm shall be such that the draw down to the permanent pool level occurs within five days, but not in less than two days;
- (3) The design permanent pool level mean depth shall be a minimum of three feet and shall be designed with a surface area sufficient to remove 85 percent of total suspended solids. The design for 85 percent total suspended solids removal shall be based on "Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality" which is hereby incorporated by reference not including subsequent amendments. This document is available from the U.S. Environmental Protection Agency (Document number EPA440/5-87-001) at no cost;
- (4) The inlet structure must be designed to minimize turbulence using baffles or other appropriate design features and shall be located in a manner that avoids short circuiting in the pond;
- (5) Pretreatment of the runoff by the use of vegetative filters may be used to minimize sedimentation and eutrophication of the detention pond;
- (6) Wet detention ponds shall be designed with a forebay to enhance sedimentation at the inlet to the pond;

- (7) The basin side slopes for the storage volume above the permanent pool shall be stabilized with vegetation down to the permanent pool level and shall be designed in accordance with Subparagraph (c)(2) of this Rule;
 - (8) The pond shall be designed with side slopes no steeper than 3:1 (horizontal to vertical);
 - (9) The pond shall be designed to provide for a vegetative shelf around the perimeter of the basin. This shelf shall be gently sloped (6:1 or flatter) and shall consist of native vegetation;
 - (10) The pond shall be designed to account for sufficient sediment storage to allow for the proper operation of the facility between scheduled cleanout periods.
- (f) **Vegetative Filter Requirements.** Vegetative filters shall be used as a non-structural method for providing additional infiltration, filtering of pollutants and minimizing stormwater impacts. Requirements for these filters are as follows:
- (1) A distribution device such as a swale shall be used to provide even distribution of runoff across the width of the vegetative filter;
 - (2) The slope and length of the vegetative filter shall be designed, constructed and maintained so as to provide a non-erosive velocity of flow through the filter for the 10 year storm and shall have a slope of five percent or less, where practicable; and
 - (3) Vegetation in the filter may be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.
- (g) **Curb Outlet Systems.** Projects that meet the low density provisions of Rules .1005 through .1007 of this Section may use curb and gutter with outlets to convey the stormwater to grassed swales or vegetated areas prior to the runoff discharging to vegetative filters or wetlands. Requirements for these curb outlet systems are as follows:
- (1) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10 year storm and the velocity of the flow shall be non-erosive;
 - (2) The longitudinal slope of the swale or vegetated area shall not exceed five percent, where practicable;
 - (3) The side slopes of the swale or vegetated area shall be no steeper than 5:1 (horizontal to vertical). Where this is not practical due to physical constraints, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (4) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (5) In sensitive areas, practices such as check dams, rock or wooden, may be required to increase detention time within the swale or vegetated area.
- (h) **Alternative Design Criteria.** In addition to the control measures outlined in Paragraphs (b), (d), (e), (f) and (g) of this Rule, stormwater management systems consisting of other control options or series of control options may be approved by the Director on a case-by-case basis. This approval shall only be given in cases where the applicant can demonstrate that the Alternative Design Criteria shall provide equal or better stormwater control, equal or better protection of waters of the state, and result in no increased potential for nuisance conditions. The criteria for approval shall be that the stormwater management system shall provide for 85 percent average annual removal of Total Suspended Solids and that the discharge rate from the system meets one of the following:
- (1) the discharge rate following the one-inch design storm shall be such that the runoff volume draws down to the pre-storm design stage within five days, but not less than two days; or
 - (2) the post development discharge rate shall be no larger than predevelopment discharge rate for the one year 24 hour storm.
- (i) **Operation and maintenance plans.** Prior to approval of the development by the Division an operation and maintenance plan or manual shall be provided by the developer for stormwater systems, indicating the operation and maintenance actions that shall be taken, specific quantitative criteria used for determining when those actions shall be taken, and who is responsible for those actions. The plan must clearly indicate the steps that shall be taken and who shall be responsible for restoring a stormwater system to design specifications if a failure occurs and must include an acknowledgment by the responsible party. Development must be maintained consistent with the requirements in these plans and the original plans and any modifications to these plans must be approved by the Division.
- (j) **System Design.** Stormwater systems must be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed. Upon completion of construction, the designer for the type of stormwater system installed must certify that the system was inspected during construction, was constructed in substantial conformity with plans and specifications approved by the Division and complies with the requirements of this Section prior to issuance of the certificate of occupancy.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);
Eff. September 1, 1995.

15A NCAC 02H .1009 STAFF REVIEW AND PERMIT PREPARATION

(a) The staff of the permitting agency shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required information are complete. The staff shall acknowledge receipt of a complete application.

(b) If the application is not complete with all required information, the application may be returned to the applicant. The staff shall advise the applicant by mail:

- (1) how the application or accompanying supporting information may be modified to make them acceptable or complete; and
- (2) that the 90 day processing period required in G.S. 143-215.1 begins upon receipt of corrected or complete application with required supporting information.

(c) If an application is accepted and later found to be incomplete, the applicant shall be advised how the application or accompanying supporting information may be modified to make them acceptable or complete, and that if all required information is not submitted within 30 days that the project shall be returned as incomplete.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);
Eff. September 1, 1995.*

15A NCAC 02H .1010 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION

(a) The Director shall take final action on all applications not later than 90 days following receipt of a complete application and with required information. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143, Article 21;
- (2) issue permit containing time schedules for achieving compliance with applicable water quality standards and other legally applicable requirements;
- (3) deny a permit application where necessary to effectuate:
 - (A) the purposes of G.S. 143, Article 21;
 - (B) the purposes of G.S. 143-215.67(a);
 - (C) rules on coastal waste treatment, disposal, found in Section .0400 of this Subchapter;
 - (D) rules on "subsurface disposal systems," found in 15A NCAC 18A .1900. Copies of these Rules are available from the Division of Environmental Health, P.O. Box 29535, Raleigh, North Carolina 27626-0535; and
 - (E) rules on groundwater quality standards found in Subchapter 2L of this Chapter.
- (4) hold public meetings when necessary to obtain additional information needed to complete the review of the application. The application will be considered as incomplete until the close of the meeting record.

(c) If a permit is denied, the letter of denial shall state the reason(s) for denial and any reasonable measures which the applicant may take to make the application approvable.

(d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);
Eff. September 1, 1995.*

15A NCAC 02H .1011 MODIFICATION AND REVOCATION OF PERMITS

Any permit issued by the Division pursuant to these Rules is subject to revocation, or modification upon 60 days notice by the Director in whole or part for good cause including but not limited to:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) refusal of the permittee to allow authorized employees of the Department of Environment, Health, and Natural Resources upon presentation of credentials:

- (a) to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;
 - (b) to have access to any copy and records required to be kept under terms and conditions of the permit;
 - (c) to inspect any monitoring equipment or method required in the permit; or
 - (d) to sample any discharge of pollutants;
- (4) failure to pay the annual fee for administering and compliance monitoring.

History Note: Authority G.S. 143-215.1; 143-215.3(a);
Eff. September 1, 1995.

15A NCAC 02H .1012 DELEGATION OF AUTHORITY

For permits issued by the Division, the Director is authorized to delegate any or all of the functions contained in these Rules except the following:

- (1) denial of a permit application;
- (2) revocation of a permit not requested by the permittee; or
- (3) modification of a permit not requested by the permittee.

History Note: Authority G.S. 143-215.3(a);
Eff. September 1, 1995.

15A NCAC 02H .1013 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143.215.1(b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities covered in this Section. All activities in the State that received a "Certificate of Coverage" for that category from the Division shall be deemed covered under that general permit. Each of the general permits shall be issued individually under G.S. 143-215.1, using all procedural requirements specified for state permits including application and public notice. Activities covered under general permits, developed in accordance with this Rule, shall be subject to the same standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director, activities in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other activities that all: involve the same or substantially similar operations; have similar characteristics; require the same limitations or operating conditions; require the same or similar monitoring; and in the opinion of the Director are more appropriately controlled by a general permit.

(b) No provision in any general permit issued under this Rule shall be interpreted to allow the permittee to violate state water quality standards or other applicable environmental standards.

(c) For a general permit to apply to an activity, a Notice of Intent to be covered by the general permit must be submitted to the Division using forms provided by the Division and, as appropriate, following the application procedures specified in this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure shall be required.

(d) General permits may be modified and reissued by the Division as necessary. Activities covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(e) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(f) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section shall be considered in violation in G.S. 143-215.1.

(g) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any activity covered by this Section.

(h) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the activity is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the site such that the activity no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Commission Rules;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the activity; or
- (6) a determination that the water of the stream receiving stormwater runoff from the site is not meeting applicable water quality standards.

(i) Any interested person may petition the Director to take an action under Paragraph (h) of this Rule to require an individual permit.

(j) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .1010 and .1011 of this Section.

History Note: Authority G.S. 143-215.1; 143-215.3(a);
Eff. September 1, 1995.

15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section .0100 entitled "Point Source Discharges to the Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(b) Other stormwater control requirements are addressed in this Section but may also be addressed in sections dedicated to particular water classifications or circumstances. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules .1014 through .1017 of this Section. For post-construction requirements, a program will be deemed compliant for the areas that satisfy Rule .1017(a)(9) of this Section.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. July 3, 2012.

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

The definition of any word or phrase for Urbanizing Areas shall be as follows:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 and § 122.26(b) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 02H .0103.
- (4) The definitions set out in Rule .1002 of this Section, except for the definitions of "Development" and "Redevelopment", which are defined below.
- (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (6) "BMP" means Best Management Practice.
- (7) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
- (8) "Division" means the Division of Water Quality in the Department.
- (9) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by G.S. 160A-19, or a county may exercise the powers authorized by G.S. 153A-18.
- (10) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.
- (11) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

- (12) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (13) "Sensitive receiving waters" means any of the following:
- (14) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 02B .0101.
- (15) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
- (16) Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 02B .0101, have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.
- (17) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300, et seq.
- (18) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. July 3, 2012.

15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS

(a) Development in Unincorporated Areas of Counties.

- (1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007 if the development is located in:
 - (A) An area that is designated as an urbanized area under the most recent federal decennial census.
 - (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
 - (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.
 - (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.
 - (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
 - (C) An area delineated pursuant to Item (2) of this Paragraph.
 - (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Paragraph (c) of this Rule; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to 15A NCAC 02H .0151(b); and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:
 - (i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;

- (v) High Quality Waters (HQW) – Rule .1006 of this Section;
 - (vi) Outstanding Resource Waters (ORW) – Rule .1007 of this Section;
 - (vii) The Coastal Stormwater Program – Rule .1005 of this Section;
 - (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (ix) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
 - (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (E) Subject to Subparagraph (4) of this Paragraph, a county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.
- (2) Delineation Process. The Commission shall delineate regulated coverage areas as follows:
- (A) Schedule: The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Potential candidate coverage areas. A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Items (2) and (3) of Paragraph (c) that:
 - (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
 - (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
 - (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Subparagraph (2)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
 - (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
 - (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
 - (i) Adversely impacts water quality.
 - (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

- (F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.
 - (3) Except as provided in this Item (3) of this Paragraph and Paragraph (d) of this Rule, the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.
 - (4) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004 is not a county under Part (1)(E) of this Paragraph and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.
- (b) Development in Non-Phase II Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (2)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule .1018 of this Section beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule.
- (c) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.
- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).
 - (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as follows:
 - (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 - (i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
 - (ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
 - (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.
 - (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
 - (i) The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.

- (ii) The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.
 - (iii) The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years.
 - (iv) The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
 - (v) The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.
- (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.
- (d) Delegation. A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Paragraphs (a) and (b) of this Rule may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Rule .1018 of this Section. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Rule .1018 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220;

Eff. July 3, 2012;
Amended Eff. July 1, 2013.

15A NCAC 02H .1017 POST-CONSTRUCTION PRACTICES

(a) Requirements for Post-Construction Practices.

- (1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:
 - (A) **Low Density Option.** A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.
 - (B) **High Density Option.** A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:
 - (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.
 - (iii) Remove an 85 percent average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in Rule .1008(c) of this Section.
 - (v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.
- (2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.
- (3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.

- (5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
 - (6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:
 - (A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
 - (C) Meet the requirements of Rule .1005(a)(2) of this Section.
 - (7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:
 - (A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
 - (8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:
 - (A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
 - (B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.
 - (9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:
 - (A) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (B) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (C) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (E) Freshwater High Quality Waters (HQW) – Rule .1006 of this Section;
 - (F) Freshwater Outstanding Resource Waters (ORW) – Rule .1007 of this Section;
 - (G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258; or
 - (I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251.
 - (10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).
 - (11) Nothing in this Paragraph (a) shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.
- (b) Exclusions from Post-Construction Practices. The post-construction practices required by Paragraph (a) of this act shall not apply to any of the following:
- (1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the

effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

- (A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
 - (B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);
 - (C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:
 - (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.
 - (ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.
 - (D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a); or
 - (E) A vested right to the development pursuant to common law.
- (2) Redevelopment as defined in Rule .1015 of this Section.

(c) Exceptions. The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

- (1) An exception may be granted if the application meets all of the following criteria:
 - (A) Unnecessary hardships would result from strict application of the act;
 - (B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;
 - (C) The hardships did not result from actions taken by the petitioner; and
 - (D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.
- (2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:
 - (A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.
- (4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.
- (5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. July 3, 2012.

15A NCAC 02H .1018 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .1019 RESERVED FOR FUTURE CODIFICATION

15A NCAC 02H .1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with the requirements of this Rule and the requirements of 15A NCAC 02B .0104(f). The Environmental Management Commission shall approve local ordinances if it determines that the requirements of the local ordinance equal or exceed the provisions of this Rule. A model ordinance for the Universal Stormwater Management Program shall be available from the Division of Water Quality (DWQ). Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. Local governments located within one of the 20 Coastal Counties may elect to have the Division of Water Quality administer and implement the Universal Stormwater Management Program, either whole or in part, within their jurisdiction following their adoption of the program. Adoption of the USMP may not satisfy water quality requirements associated with the protection of threatened or endangered species or those requirements associated with a Total Maximum Daily Load (TMDL). The requirements of the USMP shall supercede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following DWQ stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));
- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));
- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1006);
- (8) High Quality Waters (HQW) for Saltwaters (15A NCAC 02H .1006);
- (9) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1007);
- (10) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1007);
- (11) Shellfishing (SA) (15A NCAC 02H .1005(2));
- (12) Post-Construction Requirements of the Phase 2 Program (S.L. 2006-246);
- (13) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1005(3);
- (14) Stormwater Controls for 401 Certifications under 15A NCAC 02H .0500;
- (15) Catawba Buffer Rules (15A NCAC 02B .0243 and 02B .0244); and
- (16) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the Division Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the 401 Certification process in order to ensure that the proposed activity will not violate water quality standards. Adoption of the Universal Stormwater Management Program does not affect the requirements specified in 15A NCAC 02B .0214(3)(b)(i)(I), 02B .0214(3)(b)(ii)(C) and (D), 15A NCAC 02B .0215(3)(b)(i)(I), 02B .0215(3)(b)(ii)(C) and (D), and 15A NCAC 02B .0216(3)(b)(ii)(C) and (D). The Catawba Buffer Rules shall be superceded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program are replaced by the USMP. For the watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superceded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James. The implementation of the USMP shall supercede the Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed; Protection and Maintenance of Riparian Areas requirements specified in 15A NCAC 02B .0250.

(d) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale, shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (f) of this Rule. In addition, all impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters. In addition to the other

requirements specified in this Paragraph, all development activities that are located within 575 feet of waters designated by the Environmental Management Commission as shellfishing waters shall be limited to a maximum impervious surface density of 36 percent. Redevelopment activities that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(e) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land, including residential development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land, including non-residential development that disturbs less than ½ acre of land that is part of a larger common plan of development or sale, shall control the runoff from the first one inch of rainfall as specified in Paragraph (f) of this Rule. Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. For perennial and intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all development activities subject to this Rule shall be located at least 30 feet landward of all perennial and intermittent surface waters. In addition to the other requirements specified in this Paragraph, all development activities that are located within the area designated by the Environmental Management Commission as a Critical Area of a Water Supply Watershed shall be limited to a maximum impervious surface density of 36 percent. Redevelopment of residential structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed. Redevelopment of non-residential structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the one percent Annual Chance Floodplain that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(f) Structural stormwater controls required under Paragraphs (d) and (e) shall meet the following criteria:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids.
- (2) For detention ponds draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).

(g) For the purposes of this Rule, a surface water shall be present if the feature is shown on either the most recent complete version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement shall be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a).

(h) Local governments that implement the Universal Stormwater Management Program shall require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(i) Local governments that implement the Universal Stormwater Management Program shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the program. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance inspection report on each structural stormwater control measure annually to the local program.

(j) In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land within ½ mile and draining to SA waters shall:

- (1) Use stormwater control measures that result in fecal coliform die off and that control to the maximum extent practicable sources of fecal coliform while incorporating the requirements specified in Paragraph (f) of this Rule.
- (2) Prohibit new points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(k) In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use stormwater control measures that avoid an increase in the receiving water temperature, while still incorporating the requirements specified in Paragraph (f) of this Rule.

(l) The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall implement and enforce the provisions of this Rule.

(m) Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the one percent Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the one percent Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated one percent Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five degrees, or less.

(n) The following special provisions of the Universal Stormwater Management Program apply only to federal facilities and Department of Defense (DoD) installations. Federal facilities and DoD installations may adopt the Universal Stormwater Management Program within their boundaries by submitting a letter to the Chairman of the Environmental Management Commission that states that the facility in question has adopted controls that comply with the requirements of this Rule and with the requirements of 15A NCAC 02B .0104(f). In lieu of the protective covenants and deed restrictions required in Paragraph (h) of this Rule, federal facilities and DoD installations that choose to adopt the USMP within their boundaries shall incorporate specific restrictions and conditions into base master plans, or other appropriate instruments, to ensure that development activities regulated under this Rule will be maintained in a manner consistent with the approved plans.

(o) Implementation of this Universal Stormwater Management Program does not affect any other rule or requirement not specifically cited in this Rule.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);
Eff. January 1, 2007.

15A NCAC 02H .1021	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1022	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1023	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1024	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1025	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1026	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1027	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1028	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1029	RESERVED FOR FUTURE CODIFICATION
15A NCAC 02H .1030	STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND PRODUCTION

(a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production activities shall manage stormwater runoff in accordance with the provisions of this Rule.

- (1) These persons shall submit a permit application to the Division of Energy, Mineral, and Land Resources (Division) in accordance with the requirements of this Section.
- (2) These persons shall obtain a permit from the Division prior to any on-site activities other than land surveying, and surface soil testing of hydraulic conductivity and engineering properties.
- (3) This Rule authorizes the Division to issue a stormwater-only permit. Any other discharge to surface waters is prohibited unless permitted in accordance with G.S. 143-215.1.
- (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may incorporate stormwater permit conditions into an environmental protection permit encompassing multiple regulatory programs.

(b) Permit Application Requirements.

- (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1), (2), and (3) of this Section, a complete permit application and a permit are required for oil and gas exploration, development, and production activity, regardless of whether the activity also requires a CAMA major development permit or an Erosion and Sedimentation Control Plan. A permit application and permit are also required regardless of whether

the development is located in the 20 coastal counties, drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters (HQW).

- (2) The Division shall treat each stormwater permit application for oil and gas exploration, development, and production activities as a High Density Project application as provided for in Rule .1003(d)(2) of this Section, and shall only grant permit coverage if the application itself and the proposed development meet the requirements of this Rule.
- (3) The Director may solicit and receive comments from other regulatory agencies and the public when necessary to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions in an application for an environmental protection permit encompassing multiple regulatory programs. If comments are solicited, notice will be posted on the Division's website with 30 days provided for public comment to be submitted to the Director. The permit application will be included in the notice published on the Division's website.
- (4) The permit application for oil and gas exploration, development, and production activities shall be submitted to the Division at the Raleigh Central Office located at 512 North Salisbury Street, Raleigh, North Carolina 27604.
- (5) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this Section. In addition, the application shall include the following information:
 - (A) all North Carolina classifications and supplemental classifications (if any) assigned to the receiving water;
 - (B) the location of all stormwater discharge points, both by latitude and longitude coordinates and by graphic representation;
 - (C) the graphic representation of the location and delineation of wetlands and regulated buffers on the site, adjacent to the site, or between the site and the receiving water;
 - (D) a statement that there are no threatened or endangered species identified for the receiving water or for downstream receiving waters. If threatened or endangered species are present the application shall identify the threatened and endangered species and their reported locations in the receiving water and downstream receiving waters. The application shall propose specific measures for the protection of any threatened or endangered species present in the receiving water. The Division shall evaluate the proposed measures and may require additional or different measures in the final form of the stormwater management permit;
 - (E) a design narrative that explains the assumptions and calculations for the engineering design of the stormwater control systems proposed and that identifies how the design complies with each specific requirement of this Section; and
 - (F) a graphic representation of the final site grade and site conditions that will be implemented in support of a future request to rescind the stormwater permit, or comprehensive environmental permit, based on the final close out and the end of the permit holder's commercial interest in the site.
- (6) As a part of the permit application, the applicant shall submit a Stormwater Management Plan that identifies the physical and procedural stormwater management measures proposed to minimize the discharge of pollutants through stormwater. The Stormwater Management Plan shall address all phases of site activity and operation. The Stormwater Management Plan shall include:
 - (A) a description of site activities with the potential to affect the pollutant content of stormwater runoff;
 - (B) a description of the permittee's stormwater management strategy to control and minimize stormwater exposure of significant materials;
 - (C) a description of the permittee's spill prevention and response procedures;
 - (D) a description of the permittee's preparations in anticipation of, and in response to, rainfall events in excess of the design basis of the physical stormwater control and treatment measures employed;
 - (E) a description of good housekeeping measures and supporting facility inspections including a schedule of inspections and maintenance on any structural control measures;
 - (F) a description of the permittee's training of site personnel in stormwater pollution prevention; and
 - (G) the identification of the specific person or position responsible for the overall coordination, development, implementation, and revision of the Stormwater Management Plan.

(c) Stormwater Management Requirements.

- (1) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage (control, operate, maintain, store, handle, clean up, and dispose of) site conditions, materials, activities, and stormwater as follows:
 - (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
 - (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent introduction into stormwater runoff.
 - (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes shall be managed to prevent introduction into stormwater runoff. Dedicated management areas shall be established for these materials a minimum of 50 feet away from surface waters and discrete stormwater conveyances.
 - (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away from surface waters and stormwater conveyances and shall be managed to prevent runoff transport of the stockpiled materials to surface waters.
 - (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
- (2) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows:
 - (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or permanent ground cover stabilization within 7 calendar days from the last land disturbing activity.
 - (B) All other disturbed areas shall be provided temporary or permanent ground cover stabilization within 14 calendar days from the last land disturbing activity.
 - (C) Time extensions may be requested in writing by the permittee. These requests may be granted by the Division based on weather or site-specific conditions.
 - (D) Treatment measure requirements:
 - (i) All sediment basins and traps with a contributing drainage area of one acre or greater shall utilize outlet structures that withdraw water from the surface.
 - (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals shall be routed through sediment traps, filters, or other settling devices to ensure removal prior to discharge to surface waters. Only chemicals that have been approved by the Division may be used. The approved chemicals list is available on the Division's website at <http://portal.ncdenr.org/web/lr/construction-stormwater>.
- (3) For this Rule, 'spudding' the well means starting the oil or gas well drilling process by removing rock, dirt, and other sedimentary material with the drill bit. After initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, and at least 72 hours prior to spudding an oil or gas well, the permittee shall deliver to the Division written certification by the individual designing the stormwater control system in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy is provided or required by other authority, the permittee shall not proceed with spudding the well until the Division accepts the designer's written certification. Within 72 hours of receiving the designer's certificate the Division shall inspect the permitted stormwater control system. Subsequent to the inspection, the Division may withhold acceptance of the designer's certification upon concluding that the stormwater control system has not been installed in accordance with the stormwater permit and the approved stormwater permit application documents. If the Division fails to inspect the stormwater control system within 72 hours of receiving the designer's certification, the certification shall be deemed accepted by the Division and the permittee may proceed with spudding the well.
- (4) After completion of the surface site preparation activity, and beginning with the surface activity in direct support of well drilling, the permittee shall manage site conditions, materials, activities, and stormwater as follows:

- (A) Stormwater control measures shall control and treat the runoff from the rainfall event with a 24-hour precipitation total greater than or equal to 90 percent of all 24-hour rainfall event totals on an annual basis.
 - (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-development discharge rate for the 1-year, 24-hour storm.
 - (C) Stormwater control measures shall be designed in accordance with the provisions of Rule .1008 of this Section.
 - (D) In addition to the measures identified in Rule .1008(a) of this Section, other measures shall be approved where individually, or in combination, the measures achieve 85% average annual removal of Total Suspended Solids, and upon the Division's review and conclusion of appropriate design and suitability for the anticipated site conditions.
 - (E) All stormwater control measures shall be equipped with underflow baffles or other effective means to prevent the discharge of hydrocarbons and floating pollutants.
 - (F) The requirements identified in Subparagraphs (1) and (2) of this Paragraph for initial site construction shall also apply to all subsequent phases of site operation.
- (5) The Division shall establish record-keeping, self-inspection, and self-reporting permit requirements to insure effective site management attention, response actions, and control of the potential for polluted stormwater.
 - (6) Stormwater management requirements provided in this Paragraph pertain to the well pad area, all adjacent developed areas, and access and haul roads in proximity to the well pad or directly associated with the operation of the permitted site.
- (d) Coordination with other water quality regulations.
- (1) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the requirements of Rule .1006 of this Section. However, pursuant to Rule .1006 of this Section, the Division may require more stringent measures for development activities draining to HQW waters.
 - (2) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, pursuant to Rule .1007 of this Section, the Division may require more stringent measures for development activities draining to ORW waters.
 - (3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other provision of law. The requirements of this Rule are in addition to the requirements of any other rule, regulation, or other provision of law. Where any requirement of this Rule imposes restrictions different from those imposed by any other rule, regulation, or other provision of law, whichever requirement is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control. This includes Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B .0300, whether administered by the State or by a local unit of government.

History Note: Authority G.S. 113-391(a3)(1); 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); S.L. 2014-4 s. 2.(e); Eff. March 17, 2015.

SECTION .1100 - BIOLOGICAL LABORATORY CERTIFICATION

15A NCAC 02H .1101 PURPOSE

These Rules set forth the requirements for certification of commercial, industrial, and public laboratories to perform biological toxicity testing and population surveys of water and wastewater as required for National Pollutant Discharge Elimination System (NPDES) permits by G.S. 143-215.3(a)(10) and Environmental Management Commission Rules for Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, found in Subchapter 2B of this Chapter, Section .0200, and Rules for Surface Water Monitoring, Reporting, found in Subchapter 2B of this Chapter, Section .0500.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66; Eff. October 1, 1988; Amended Eff. March 1, 1993.

15A NCAC 02H .1102 SCOPE

These Rules apply to commercial, industrial, or public laboratories which perform toxicity testing of water or wastewater for persons subject to any requirements for monitoring of toxicity through direct measurement of the effects of a specific water or wastewater or aquatic organisms in laboratory tests or through field surveys.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988.

15A NCAC 02H .1103 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

- (1) Categories are groups of parameters which differ by measured test exposure regimes (chronic and acute) and, in the case of toxicological assay, through the presence or absence of vertebrae in the species of test organisms used or being a member of the plant kingdom. All field population survey techniques are contained within one category.
- (2) Certification is a declaration by the Division that personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicants' proficiency has been considered and found acceptable.
- (3) Commercial Laboratory means any laboratory, including its employees and agents, which analyzes, for others, wastewater samples for toxicity measurements or for their resultant impacts on the receiving waters.
- (4) Decertification is the loss of certification.
- (5) Director means the Director of the North Carolina Division of Environmental Management, or his successor.
- (6) Division means the North Carolina Division of Environmental Management, or its successor.
- (7) Evaluation samples are samples submitted by the State Laboratory to the commercial, municipal, industrial, or public laboratory as an unknown toxicant for measurement of toxicity or as an unknown set of preserved organisms for identification to specified levels of taxonomic classification.
- (8) Falsified data or information means data or information that has been made untrue by alteration, fabrication, intentional omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.
- (9) Inaccurate data or other information means data or information that is in any way incorrect or mistaken.
- (10) Industrial Laboratory means a laboratory, including its employees and agents, operated by an industry to analyze samples from its wastewater treatment plants for toxicity measurements or resultant impacts to receiving waters.
- (11) Parameters are subgroups of categories. Parameters are unique and separate if they are in separate categories or are performed using different species of test organisms. For the category, Aquatic Population Survey, separate parameters are to be considered fish, macroinvertebrates, algae, aquatic macrophytes, and zooplankton.
- (12) Public Laboratory means a laboratory, including its employees and agents, operated by a municipality, county, water and sewer authority, sanitary district, metropolitan sewerage district, or state or federal installation or any other governmental unit to analyze samples from its wastewater treatment plant(s) for toxicity measurements or resultant impacts to receiving waters.
- (13) Recertification is reaffirmation of certification.
- (14) Split samples are samples from either a surface water effluent discharge, surface water, or aquatic biological population survey which are segregated at the point of sampling or in the case of field survey, collected independently and then analyzed separately by both the State Laboratory and the commercial, public or industrial laboratory.
- (15) State laboratory means the Environmental Sciences Branch of the Water Quality Section of the North Carolina Division of Environmental Management or its successor.
- (16) Toxicant - Any specific chemical or compound or mixture of chemicals or compounds regulated within an NPDES permit and/or defined as a toxic substance in Rule .0202 of Subchapter 2B.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988;

Amended Eff. April 1, 1993.

15A NCAC 02H .1104 FEES ASSOCIATED WITH CERTIFICATION PROGRAM

(a) Certification Fees:

- (1) Certification Fees shall be a minimum of five hundred dollars per year (\$500.00). The first category will be certified at a cost of five hundred dollars (\$500.00). Additional categories will be certified at a cost of four hundred dollars (\$400.00) per category. The addition of parameters not included in the original certification will be certified at a cost of one hundred dollars (\$100.00) per parameter.
- (2) Certification fees are due upon application and no later than 45 days prior to the requested certification date.

(b) Renewal Fees:

- (1) The certified laboratory will pay the state a four hundred dollar (\$400.00) per year renewal fee for each category of certification or the minimum fee five hundred dollars (\$500.00) if only one category is certified.
- (2) Recertification fees shall be four hundred dollars (\$400.00) per category recertified.
- (3) Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification, recertification and maintenance of certification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66; Eff. October 1, 1988.

15A NCAC 02H .1105 CERTIFICATION

(a) Certification is affirmation by the Director or his delegate that the requirements specified by these rules have been met for specific categories and parameters and that all fees associated with certification have been received.

(b) Commercial, public and industrial laboratories must obtain certification from the Division of Environmental Management only for biological parameters which will be reported to comply with the rules and requirements as stated in an administrative letter, permit condition, permit limit, special order by consent, judicial order, or the biological monitoring requirements established by the Division.

(c) For the purposes of certification and setting fees, parameters are grouped in the following five categories:

- (1) Acute Toxicity Testing/Invertebrate;
- (2) Acute Toxicity Testing/Vertebrate;
- (3) Chronic Toxicity Testing/Invertebrate;
- (4) Chronic Toxicity Testing/Vertebrate;
- (5) Agal and Aquatic Plant Toxicity Testing;
- (6) Aquatic Population Survey and Analysis.

(d) All certifications are designated for the period of one year after initial certification.

(e) Protocol Documents considered as standard methodology and facilities and equipment requirements considered as minimum acceptable resources will be listed in the Certification Criteria/Procedures Document.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(1)(10); 143-215.66; Eff. October 1, 1988.

15A NCAC 02H .1106 DECERTIFICATION

(a) A laboratory certification may be revoked for all categories for:

- (1) Failing to maintain the facilities, records, personnel, equipment or quality assurance program as set forth in the application or these Rules; or
- (2) Submitting inaccurate or falsified data reports or other information; or
- (3) Failing to pay required fees by the date due.

(b) A laboratory certification may be revoked for a category for failure to:

- (1) Obtain acceptable results on two consecutive evaluation sample submittals from the Division. Acceptable results on performance evaluation samples are those that vary by less than two standard deviations of the value established by the Division. The state laboratory may apply specific variance or statistical limits or performance criteria on performance evaluation samples or split samples for a particular testing procedure, including control population effects and taxonomic identification, as published in the Certification Criteria/Procedures Document; or
 - (2) Obtain acceptable results as set out in Paragraph (1) of this Rule on two consecutive split samples that have also been analyzed by the Division; or
 - (3) Submit a split sample to the Division as requested; or
 - (4) Use approved testing techniques; or
 - (5) Report to the state laboratory equipment changes that would affect its ability to perform a test category within 30 days of such change; or
 - (6) Report to the state laboratory analysis of performance evaluation samples submitted by the Division within required time of completion; or
 - (7) Maintain records and perform quality controls as set forth by these Rules and the Division for a particular category; or
 - (8) Maintain equipment required for any certified parameter; or
 - (9) Implement and maintain Quality Control Programs approved in conjunction with certification; or
 - (10) Maintain a qualified staff.
- (c) Decertification Requirements:
- (1) A laboratory is not to analyze samples for parameters in decertified categories for programs described in Rule .1102 of this Section.
 - (2) A decertified commercial laboratory must notify any clients affected by the decertification of such and supply the state laboratory with a list of those clients affected and written certification that those clients have been notified. Should the decertified laboratory arrange for a certified laboratory to perform analyses during the period of decertification, the decertified laboratory must supply the Division with the name of the replacement laboratory and the client(s) involved. The certified laboratory's name which performs analyses must appear on all data submitted to the Division.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
 Eff. October 1, 1988;
 Amended Eff. March 1, 1993.

15A NCAC 02H .1107 RECERTIFICATION

- (a) A laboratory decertified for any reason, other than the submittal of falsified data reports or other information, may be recertified after 30 days, upon satisfactory demonstration to the state laboratory that all deficiencies have been corrected.
- (b) In the case of a laboratory decertified for submitting falsified data reports or other information, recertification shall not occur until at least 12 months after the decertification and then only at such time as the laboratory has satisfactorily demonstrated to the Director that the standards for initial certification have been met.
- (c) Should decertification occur due to either failure of performance samples or split samples, a written request must be made to the state laboratory requesting evaluations similar to the parameters for which the laboratory was decertified. Two consecutive samples must be successfully evaluated to achieve recertification. The first of these samples for recertification will be submitted or arranged by the Division no later than 30 days after receipt of the written request. The second will be submitted or arranged no later than 30 days after the first.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
 Eff. October 1, 1988;
 Amended Eff. March 1, 1993.

15A NCAC 02H .1108 RECIPROCITY

- (a) Laboratories certified by other states or federal programs may be given reciprocal certification where such programs meet the requirements of these Rules. In requesting certification through reciprocity, laboratories shall include with the application a copy of their certification and the rules of the original certifying agency.
- (b) Laboratories certified on the basis of program equivalency shall pay all fees specified by these Rules.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988;
Amended Eff. March 1, 1993.

15A NCAC 02H .1109 ADMINISTRATION

The Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, or his delegate, is delegated authority to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988;
Amended Eff. March 1, 1993.

15A NCAC 02H .1110 IMPLEMENTATION

- (a) Each laboratory requesting state certification or certification renewal or recertification shall submit an application in duplicate to the Division. Each application will be reviewed to determine the adequacy of personnel, equipment, records, quality control procedures and methodology. After receiving a completed application and prior to issuing certification, a representative of the Division may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (b) Analytical methods, sample preservation, sample containers and sample holding times shall conform to the methodologies specified in the Certification/Criteria Procedures Document. Deviations from these methods are acceptable only upon prior written approval from the state laboratory.
- (c) In order to maintain certification, each laboratory will demonstrate satisfactory performance on evaluation samples submitted by the Division. These will be required no more than three times annually of certified laboratories for each parameter certified.
- (d) In order to receive and maintain certification the following minimum criteria must be met:
- (1) The supervisor of an aquatic toxicology or biological survey laboratory must have a minimum of a B.S. degree from an accredited college or university in a biological science or closely related science curriculum and at least three years of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate, or a M.S. degree in a biological or closely related science and at least one year of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate.
 - (2) All laboratory supervisors are subject to review by the Division. One person may serve as supervisor of no more than two laboratories. The supervisor is to provide direct supervision and evaluation of all technical personnel and is responsible for the proper performance and reporting of all analyses. Upon absence, the supervisor shall arrange for a suitable substitute capable of insuring the proper performance of all laboratory procedures. Existing laboratory supervisors who do not meet the minimum requirements may be accepted after review by the Division if they meet all other certification requirements and previous performance is deemed adequate.
 - (3) All applications and fees are due 45 days prior to the requested certification date. Problems identified with the applying laboratory and resolution of these problems may extend the requested 45 day period from application to certification.
 - (4) Each laboratory shall develop and maintain a document outlining quality control procedures for all parameters in their certification and dissolved oxygen, temperature, and pH. All aquatic toxicology laboratories must also develop and maintain a document outlining quality control procedures for total hardness and total residual chlorine. These documents are to be included with submittal of the application.

- (5) Each laboratory certified for the category of Aquatic Population Survey and Analysis shall develop and maintain a document outlining quality control procedures for taxonomic identifications and life-stage determinations.
- (6) Supporting records shall be maintained as evidence that these practices are being effectively carried out and shall be available to the state laboratory upon request.
- (7) The quality control program is to be approved in conjunction with certification by the Director.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988;
Amended Eff. October 1, 1993.

15A NCAC 02H .1111 BIOLOGICAL LABORATORY CERT/CRITERIA PROCEDURES DOCUMENT

The Biological Laboratory Certification/Criteria Procedures Document describes specific scientific reporting units, forms, test methods and procedures pertaining to certification.

The manual, and any addition thereto, shall be approved by the director before it is released to the public. The manual shall be mailed to all certified biological laboratories and to any persons on the mailing list. To be placed on the mailing list, a letter must be sent to the director.

If the manual is revised at any time, all changes shall be sent to the certified biological laboratories and those persons on the mailing list.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988.

SECTION .1200 - SPECIAL ORDERS

15A NCAC 02H .1201 PURPOSE

The purpose of this Section is to implement the provisions of G.S. 143-215.2 and G.S. 143-215.110 pertaining to the issuance of surface water, ground water and air quality Special Orders by the Environmental Management Commission.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.110;
Eff. October 1, 1990.

15A NCAC 02H .1202 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-212 and G.S. 143-213. Other terms used in this Section are defined as follows:

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air or waters of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.2 or G.S. 143-215.110.
- (2) "Consent Order" or "Special Order by Consent" means a type of Special Order where the Commission enters into an agreement with the person responsible for water or air pollution to achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality degradation.
- (3) "Director" means the Director of the Division of Environmental Management.

History Note: Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1); 143-215.110;
Eff. October 1, 1990.

15A NCAC 02H .1203 PUBLIC NOTICE

(a) Notice of proposed Consent Order:

- (1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the Commission or the Director.
- (2) The Notice shall include at least the following:
 - (A) name, address, and phone number of the agency issuing the public notice;
 - (B) name and address of the person to whom the order is directed;
 - (C) a brief summary of the proposed conditions of the agreement including a disclosure of the final compliance date and the major permit conditions which the permittee will be allowed to exceed;
 - (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final determination on the proposed agreement. This shall include explanations of the comment period and how interested persons may influence or comment on the proposal along with procedures to request a public meeting. The description shall specify that requests for a public meeting and comments are to be received by the Division within 30 days following the newspaper publication of the public notice;
 - (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(b) Notice of public meetings for proposed Consent Order:

- (1) The Director shall consider all requests for a public meeting and if he determines that there is significant public interest, then he will cause such a meeting to be held.
- (2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.
- (3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule relative to the identification of the parties involved, the conditions of the proposal, how to obtain additional information and the procedures to be followed by the Commission in reaching a final determination. It should also provide full information regarding the time and location for the meeting along with procedures for the various methods of providing comment.

(c) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of notices to those who have submitted a request.

(d) The Director may combine the requirements in Paragraphs (a) and (b) of this Rule with a combination comment period and public meeting notice.

(e) Any Special Order by Consent may be amended by the Director to incorporate minor modifications, such as reallocations of allowable flows, modification of standard conditions to reflect updated versions, correct typographical errors and interim date extensions, in a consent order without public notice provided that the said modifications may not extend final compliance date by more than four months.

(f) The requirements of this Rule for public notice and public meeting were developed to apply to Special Orders by Consent. The Commission may specify other conditions for Special Orders issued without consent.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3);
143-215.3(a)(4); 143-215.110;
Eff. November 1, 1990;
Amended Eff. August 3, 1992.

15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT

The Director is authorized to take final action for the Commission on Special Orders by Consent except in those cases where a public meeting is held as provided in 15A NCAC 2H .1203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice or, if a public meeting is held, within 90 days following the meeting.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;

Eff. October 1, 1990.

15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT

The Commission may issue a proposed Special Order without the consent of the person affected. The Commission shall notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed Special Order.

*History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);
Eff. October 1, 1990;
Amended Eff. August 3, 1992.*

15A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT

(a) Requests for Water Quality Special Orders by Consent:

- (1) Requests by permittees must be made in triplicate on forms supplied by the Division of Environmental Management along with a nonrefundable four hundred dollars (\$400.00) fee and all other required information.
- (2) Requests found to be incomplete will be returned to the permittee with an explanation of deficiencies.
- (3) Requests must be signed as follows:
 - (A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility for which the Order is being requested;
 - (B) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
 - (C) in the case of a sole proprietorship, by the proprietor;
 - (D) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(b) Evaluation of the requests:

- (1) Requests will not be evaluated unless it is 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. The demonstration must also evaluate all reasonably available low-capital-cost interim improvements, even though they may not be directly related to the final treatment option. This demonstration must be made in the form of a report prepared by an independent consultant (a professional with expertise in wastewater treatment).
- (2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the Director that:
 - (A) funds needed to meet the requirements of the proposed order are available or will be available to meet the compliance schedule and any interim effluent limitations; or
 - (B) that the permittee can adopt specific alternative steps to achieve compliance where the permittee cannot assure total financing of needed facilities.

(c) Development of the Special Order:

- (1) The compliance schedule in the order must be sufficiently detailed to insure that the permittee is constantly progressing toward final compliance. This schedule will normally include, but not be limited to, activities such as submission of plans and specifications, starting of construction, completion of construction and achievement of final compliance.
- (2) The interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system. In cases of phased construction or expected interim treatment facility improvements, the interim limitations shall reflect these expected improvements. Likewise, if treatment units must be taken off line due to construction, the interim limitations may be modified during the period of actual outage.
- (3) To insure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. Also a monetary settlement will normally be included in the order to settle previous violations.

- (4) The order must contain a condition that advises the permittee that it is responsible for funding the treatment system improvements and that lack of funds will not be a defense in contesting stipulated penalties.
- (d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of government, in accordance with G.S. 143-215.67(b).
- (1) Additional flows will only be allowed as part of a consent Order when the following demonstrations can be made:
 - (A) New or improved wastewater treatment facilities will be constructed in the near future that will adequately treat the existing and additional waste or the permittee can adopt specific alternative steps to offset the adverse effects of the additional waste.
 - (B) The flows are needed to provide minimum reasonable service to identified new residential, commercial and industrial sources or equivalent substitutions for those sources as approved by the Director.
 - (C) The nature of the additional flows is such that the waste characteristics do not exceed those generally associated with domestic waste or are pretreated to domestic strengths. Waste of greater than normal domestic strength may be accepted if the parameter(s) are not those for which interim limitations have been developed and it can be demonstrated to the satisfaction of the Director that the additional waste will not adversely affect the treatment efficiency of the treatment system for any modified parameter or result in the violation of any other permit limitation.
 - (D) All new and proposed industrial waste tributary to the system must be controlled using all needed mechanisms including but not limited to adoption and implementation of industrial waste control and pretreatment ordinances.
 - (E) The cumulative impacts of wastewater allowed under the order will 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 flow (7Q10) and the average flow. The division must consider any special or protected waters such as but not limited to, High Quality Waters, Water Supply Waters, Trout Waters and Shellfish Waters in conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:
 - (i) A predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added will not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater will be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l unless specific approval is granted by the Environmental Management Commission. In making this decision, the Commission will consider criteria such as but not limited to naturally occurring background dissolved oxygen levels, projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater will be allowed into the system; or
 - (ii) A predictive increase in the length of the affected segment (that segment in which the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5 miles or greater; or
 - (iii) An increase in coliform bacteria density predicted to exceed applicable water quality standards; or
 - (iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters which are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or significant impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule;
 - (v) The proposed addition of toxic pollutants in quantities not generally associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater can be supported through appropriate analyses acceptable to the Director.
 - (2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director will consider factors such as but not limited to the parameter(s) being violated, the magnitude of the

violation(s), the projected duration of the violation(s), the waters being impacted or projected to be impacted and the reasons for the violation(s). In the notification to the permittee that the flow has been rescinded, the Director will identify the factor(s) that made the decision necessary.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1);
Eff. August 3, 1992.

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

- (a) The provisions of this Section shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.
- (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters which have been listed in 15A NCAC 02B .0300. If the US Army Corps of Engineers or its designee determines that a particular water or wetland is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section (15A NCAC 02H .1301 - .1305).
- (c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit. Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency. Certificates of Coverage for General Permits may be issued for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).
- (d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.
- (e) The following are exempt from this Section:
- (1) Activities that are described in 15A NCAC 02B .0230;
 - (2) Discharges to isolated, man-made ponds or isolated ditches except for those wetlands or waters constructed for compensatory mitigation or for on-site stormwater management;
 - (3) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;
 - (4) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67);
 - (5) A discharge resulting from an activity if:
 - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;
 - (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or
 - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to the effective date of this Rule.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);

*Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.*

15A NCAC 02H .1302 APPLICATION PROCESS

(a) Application for a Permit. Any person, as defined in G.S. 143, Article 21, desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water Quality (Director), an original and six copies of an application for a Permit. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;
- (4) the nature of the discharge including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D(e) with a check or money order to be made payable to the North Carolina Division of Water Quality. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and
- (8) the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.

(b) Maps. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters (preferably surveyed or located with Global Positioning System equipment) including wetlands within the boundaries of said lands.

(c) Request For Additional Information. The Director may request, in writing within 60 days of receipt of an application and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications shall be returned to the applicant.

(d) Omissions From Applications. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division of Water Quality based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in Paragraph (e).

(e) Investigations. The staff of the Department of Environment and Natural Resources (Department) shall conduct such investigation as the Director deems necessary and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.

(h) Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a)

and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division of Water Quality for review under this Permit.

*History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and
October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.*

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) Notice of Publication. Within 30 days of receipt of a complete application, the Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is eligible for a General Permit:

- (1) Individual Permit. Notice of the Director's intent to issue or deny a complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. Publication shall be made at least 30 days prior to proposed final action by the Director on the application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.
- (2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director on the application. The notice shall also state where additional information is on file with the Department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department. Any person who desires a public hearing on an Individual or General Permit application shall so request in writing to the Director within 30 days following the publication of the notice of intent.

(c) Notice of Hearing. Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If the Director determines that there is significant public interest in holding a hearing, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(d) Wetland Permit Mailing List. Any person may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a Wetland Permit Mailing List and shall mail copies of notices to all persons on the list.

(e) If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any public hearing held for this Rule may be coordinated with those hearings.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and
October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003.*

15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE

(a) Not later than 60 days following the publication of the notice of intent or decision to process the project under a General Permit, or within 90 days following a public hearing, the Director shall issue, issue with modifications, or deny the complete Permit application or complete application for Certificate of Coverage. Failure to take action within 60 or 90 days, respectively, shall result in the waiver of the permit requirement by the Director.

(b) Conditions of Permit. Any Permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to insure compliance with this Section including written post-discharge notification to the Division.

(c) Modification or Revocation of Permit or Certificate of Coverage:

- (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and
- (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(d) Notification of Unapproved Application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to be approved.

(e) Permit or Certificate of Coverage renewals shall require a new application and payment of a fee to the Division of Water Quality unless the applicant requests and is granted an extension in writing which shall be granted for a time period not to exceed one additional year provided that the construction has commenced or is under contract to commence.

(f) Contested Case Hearing for Applicant. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable conditions, shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) by filing a petition under G.S. 150B-23 within 30 days after the Director notifies the applicant or permittee of its decision in writing.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b) Discharges from Activities Deemed to be Permitted: Discharges resulting from activities in isolated wetlands or waters that are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as they fully comply with conditions listed below and may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts. Conditions which must be met for projects deemed to be permitted:

- (1) Erosion and sediment control practices shall equal or exceed those required by the N.C. Division of Energy, Mineral, and Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
- (2) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Energy, Mineral, and Land Resources or local delegated program determines that the land disturbance project is completed and the file is closed out;

- (3) Live or fresh concrete shall not come into contact with surface water until the concrete has hardened; and
 - (4) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.
- (c) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:
- (1) has no practical alternative under the criteria outlined in Paragraph (e) of this Rule;
 - (2) will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;
 - (3) does not result in the violation of groundwater standards, or water quality standards in the remaining surface waters;
 - (4) does not result in cumulative impacts which are environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions, and that cause or will cause a violation of downstream water quality standards;
 - (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
 - (6) provides for replacement of existing uses through mitigation with the following provisions:
 - (A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;
 - (B) Mitigation shall be at a 2:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;
 - (C) Mitigation for impacts to waters shall be conducted within the same river basin and physiographic province when practical; and
 - (D) In-kind mitigation will be required unless other forms of mitigation provide greater water quality or aquatic life benefit.
- (d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:
- (1) has no practical alternative as described in Paragraph (e) of this Rule;
 - (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;
 - (3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;
 - (4) does not result in cumulative impacts which are described in Subparagraph (c)(4) of this Rule and that cause or will cause a violation of downstream water quality standards;
 - (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
 - (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.
- (e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.
- (f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:
- (1) The spatial and dimensional requirements of the project; or
 - (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
 - (3) The purpose of the project and how the purpose relates to placement, configuration or density.
- (g) Replacement or mitigation of unavoidable losses of existing uses in isolated wetlands shall be reviewed in accordance with the following guidelines:
- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.

- (2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.
- (3) Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks (those mitigation banks which have been approved by the United States Army Corp of Engineers through the Mitigation Banking Review Team process) shall be required whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.
- (4) Acceptable methods of wetlands mitigation are listed below:
 - (A) Restoration: Re-establishment of hydrology to the natural or reference condition which are sites within a specific geographic region that are chosen, for the purposes of functional assessment or mitigation, to encompass the known variation of a group or class of wetlands, including both natural and disturbance variations and is in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition;
 - (B) Creation: Construction of wetlands in an area where wetlands did not exist in the past;
 - (C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology; and
 - (D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to a government or non-profit agency for management.
- (5) Restoration or creation shall be the required method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration or creation is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where the state and federal review agencies have approved credit/debit ratios.
- (7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.
- (8) Mitigation for impacts to isolated wetlands designated in Paragraph (b) of this Rule shall be conducted within the same river basin and physiographic province when practical.
- (9) In-kind mitigation is required unless other forms of mitigation provide greater water quality or aquatic life benefit.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);
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