

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.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 stormsewer 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 waterbody 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 02H .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 02H.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 02H .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) 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 02H .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 Subparagraph (2)(B)(ii) 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 riverbasin 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 2B .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).

(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 02H .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); Eff. July 3, 2012.

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.