Attachment B – Excerpt from Session Law 2006-246

SECTION 4.(a) Development in Unincorporated Areas of Counties. –

(a) 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 Section 9 of this act beginning 1 July 2007 if the development is located in:

(1) An area that is designated as an urbanized area under the most recent federal decennial census.

(2) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

a. One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals.

c. Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) An area delineated pursuant to subsection (b) of this section.

(4) 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 subdivision (2) of subsection (a) of this section; (iii) the area delineated pursuant to subsection (b) of this section; (iv) the jurisdiction of a regulated entity designated pursuant to Section 5 of this act; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Section 6 of this act; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed seventy-five percent (75%) of the total geographic area of the county. For purposes of this subdivision, the stormwater programs administered by the Division are:

a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.

b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.

c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.

d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.

e. High Quality Waters (HQW) – 15A NCAC 2H.1006.

f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.

g. The Coastal Stormwater Program – 15A NCAC 2H.1005.

h. The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.

i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.

j. The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

k. Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.

(5) 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.

(b) Delineation Process. – The Commission shall delineate regulated coverage areas as provided in this subsection.

(1) 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).

(2) 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 subdivisions (2) and (3) of Section 5 of this act that:

a. Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals.

b. 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.

c. Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(3) Identification of candidate coverage areas. – The Commission shall identify an area within a potential candidate coverage area described in sub-subdivision b. of subdivision (2) of this subsection 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.

(4) 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.

(5) 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:

a. Adversely impacts water quality.

b. 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 subsections (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 2B .0300, et seq. (Assignment of Stream Classifications).

(6) 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.

(c) Except as provided in this subsection and Section 10 of this act, 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 Section 10 of this act.

SECTION 4.(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 subdivisions (4) and (5) of subsection (a) of this section, that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Section 9 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 Section 10 of this act.

SECTION 5. 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 provided in this subdivision.

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:

1. 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.

2. Serves a public entity that has not been designated pursuant to subdivision (1) of this section 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:

1. The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.
2. 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.
3. The public entity has an actual population increase that exceeds fifteen percent (15%) of its previous population for the previous two years.
4. The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.
5. 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 subsections (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 2B .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.