TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02H .0152 and .1016.*

Agency obtained G.S. 150B-19.1 certification:

☒ **OSBM certified on:** *October 3, 2012*
☐ **RRC certified on:**
☐ **Not Required**

Link to agency website pursuant to G.S. 150B-19.1(c):
http://portal.ncdenr.org/web/guest/rules
http://portal.ncdenr.org/web/wq/ws/su/current-notices
http://www.osbm.state.nc.us/files/pdf_files/DENR10032012.pdf

Proposed Effective Date: *August 1, 2013*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice)*: *As per G.S. 150B-21.2(c) and (e), send written requests to: NCDENR-DWQ-SPU, Attn: Robert Patterson, 1617 Mail Service Center, Raleigh, NC 27699-1617. Requests must be received by January 17, 2013.*

Reason for Proposed Action: *These rules are being proposed for amendment as required per Session Law 2011-220. That SL modified the criteria of whether whole counties would be required to implement the Phase II stormwater requirements county-wide. This led to one county no longer meeting the requirements to implement county-wide Phase II stormwater. SL 2011-220 amended SL 2006-246, of which those requirements have since been placed in 15A NCAC 02H .0100 and 15A NCAC 02H .1000 (eff. 7/3/2012). Therefore the NCAC must be amended per the direction of SL 2011-220. There is no change to the current requirements being implemented by adopting these rules.*

Procedure by which a person can object to the agency on a proposed rule: *A person can submit written comments to the contact below, objecting to the proposed rules. However, SL 2011-220 does not allow for the EMC to make changes to the current requirements being implemented in the session law.*

Comments may be submitted to: *Robert Patterson, NCDENR-DWQ-SPU, 1617 Mail Service Center, Raleigh, NC 27699-1617; phone (919) 807-6375; fax (919) 807-6494; email robert.patterson@ncdenr.gov*

Comment period ends: *March 4, 2013*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact (check all that apply).

☐ **State funds affected**
☐ **Environmental permitting of DOT affected**
Analysis submitted to Board of Transportation
☐ **Local funds affected**
Date submitted to OSBM:
☐ **Substantial economic impact (≥$500,000)**
☒ **Approved by OSBM** *http://www.osbm.state.nc.us/files/pdf_files/DENR10032012.pdf*
☒ **No fiscal note required by G.S. 150B-21.4**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

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~~ 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 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 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 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).

(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 Subparagraph (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 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).

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

SECTION .1000 - STORMWATER MANAGEMENT

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) ~~A~~ 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 Subparagraph (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.

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