



Alan W. Klimek, P.E. Director Division of Water Quality

May 18, 2005

To:

Paul Rawls, Chief

Surface Water Protection Section

From:

Alan Klimek

Subj:

Issuance of General Permit for the National Pollutant Discharge Elimination System (NPDES)

Phase 2 Stormwater Permitting Program

Stormwater runoff is a serious problem in North Carolina. The pollutants that are contained in this runoff have the potential to impair water bodies and degrade the aquatic ecosystem of the receiving waters. In response to the environmental threat posed by stormwater discharges, the Environmental Protection Agency (EPA) mandated the implementation of the National Pollutant Discharge Elimination System (NPDES) Phase 2 Permitting Program for the stormwater discharges associated with approximately 120 municipal separate storm sewer systems (MS4s) in North Carolina. As a result of the Phase 2 Program the Division of Water Quality (DWQ) developed general and individual draft NPDES Permits for the affected MS4s within this State. I am optimistic that these Phase 2 Permits will significantly enhance our ability to effectively regulate the stormwater discharges of the affected communities. The NPDES Phase 2 Program represents the first holistic, statewide approach to the control, management, and regulation of stormwater in North Carolina. The Phase 2 Program goes far beyond the establishment of the postconstruction stormwater controls normally associated with previous stormwater programs, to mandate the implementation of an additional five minimum measures to achieve permit compliance. These additional minimum measures include public involvement and education, illicit discharge elimination, construction control, and pollution prevention. I believe that the implementation of this comprehensive set of requirements and measures will eventually produce significant improvements in the control of the pollutants contained in stormwater discharges and runoff.

During the public comment period for the draft General Phase 2 Permits a series of four Public Hearings were conducted throughout the State. As a result of these hearings and the associated comment period a number of thoughtful and insightful comments regarding these draft permits were submitted by members of the general public, the environmental advocacy groups, and the regulated community to the Permit Hearing Officers for their consideration. The Hearing Officers' compilation of these comments and their considered response is contained in Attachment 1. Due to the large volume of comments received, and the serious issues raised by these comments, I felt that it would be appropriate for me to address the most significant issues by providing my response in this memorandum.

Regarding the comments that eligibility for the Phase 2 General Permit should be limited in scope, I am directing DWQ Staff to implement this recommendation. Staff will limit eligibility for the General Permit to MS4s that are not located in any of the 20 Coastal Counties, that are not subject to a TMDL, and that are owned or operated by a community with a population of less than 16,500. I have chosen the population cut-off of 16,500 because this will still allow 75% of the affected communities to remain eligible for the General Permit. It is my judgment that the 25% of the affected communities with populations above 16,500 own and operate more sophisticated MS4s that would be more appropriately regulated under an individual permit. In addition, eligibility for the General Permit will be further limited to only those communities that employ the North Carolina Division of Land Resources program to meet the Construction Site Runoff Control minimum measure. Affected local governments that do not meet North Carolina these criteria will be required to seek coverage under an individual permit. Naturally

Regarding comments that due to the sensitive nature of our coastal aquatic resources that the General Permit should not be issued to communities within the 20 Coastal Counties and that the issuance of the General Permit would be contrary to the goals of the Coastal Habitat Protection Plan (CHPP), I am directing Staff to limit eligibility for the General Permit to local governments that are not located within the Coastal Counties. Additionally, in response to the great volume of concern expressed regarding our ability to adequately protect our coastal waters and resources utilizing low density impervious surface limits of 24% and greater, I am directing Staff to withhold the issuance of the individual Phase 2 Permits for those communities within the Coastal Counties until such time that a review of the effectiveness of the proposed post-construction stormwater control measures in the draft Phase 2 Permits and the existing State Coastal Stormwater Program can be completed. In conducting this review, the Division shall seek input from the Environmental Management Commission regarding the potential application of enhanced stormwater controls to protect North Carolina's coastal waters. Until this review can be completed, we will continue to issue permits under the existing State Coastal Stormwater Program. By this memorandum, I am directing Staff to be prepared to present its initial findings regarding the effectiveness of our existing coastal stormwater program to the Water Quality Committee (WOC) by its October 2005 meeting. At the May 2005 WOC Meeting, the Division introduced the WQC to the Universal Stormwater Management Program (USMP). I would like Staff to examine the possibility of incorporating elements from the USMP into the State Coastal Stormwater Program or the individual Phase 2 Permits for the communities within the Coastal Counties.

Regarding the comments that the General Permit should not be issued in non-coastal areas that encompass freshwater sensitive watersheds (such as HQW, ORW, or Water Supply Watersheds), I am directing Staff to move forward with plans to allow communities with these watersheds within their jurisdictions to remain eligible for the General Permit. As previously stated, eligibility for the General Permit has already been limited to local governments with populations under 16,500 that are not subject to a TMDL and that are not located within the Coastal Counties. Many of the existing stormwater control programs for HQW, ORW, and Water Supply Watersheds already contain low density impervious surface limits of 12%. There is no evidence that demonstrates that these existing programs are ineffective in protecting the designated uses of these sensitive watersheds. The General Phase 2 Permit has been written in a manner that will keep these existing stormwater control programs in place even after the implementation of the Phase 2 requirements. Based upon this, I am confident that the additional Phase 2 requirements will only enhance the continued protection of the designated uses of these sensitive waters.

Regarding comments that 24% impervious surface density will not protect the coastal waters and that the State's existing stormwater programs are ineffective, see my previous responses.

Regarding comments that the General Permit should not be issued where impaired waters are involved, as previously stated, I am directing Staff to limit eligibility for the General Permit to those communities that are not subject to a TMDL.

Regarding comments that the issuance of the General Permit is contrary to the Antidegradation Policy, I am confident, following a thorough review of the Antidegradation Policy Rule, that the issuance of the General Permit is not a violation of this Rule.

Regarding the comments that it would be impossible for the affected communities to comply with the requirement in the draft permits that stated "This General Permit does not authorize discharges that may cause or contribute to violations of water quality standards," I am directing Staff to clarify this specific language in the General Permit.

The preceding information responds to the major issues that were raised during the public comment period and in the public hearings. In accordance with the modifications outlined in this memorandum, I have signed the attached revised General NPDES Phase 2 Stormwater Permit with an effective date of May 18, 2005.