**STATE OF NORTH CAROLINA**
**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**
**DIVISION OF WATER QUALITY**

# DRAFT GENERAL PERMIT – NCG 010000

**TO DISCHARGE STORMWATER UNDER THE**
**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**
**for**

# CONSTRUCTION ACTIVITIES

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by North Carolina Environmental Management Commission and the Federal Water Pollution Control Act as amended:

> All owners or operators of stormwater point source discharges associated with construction activities including clearing, grading and excavation activities resulting in the disturbance of land are hereby authorized to discharge stormwater to the surface waters of North Carolina or to a separate storm sewer system conveying stormwater to the surface waters in accordance with the terms and conditions set forth herein. Failure to receive coverage under this permit or violations of any of the conditions listed may result in assessment of state or federal civil or criminal penalties for each day of violation.

The General Permit shall become effective on August 2, 2011.
The General Permit shall expire at midnight on August 2, 2016.

Signed this day August _____, 2011

_____
Coleen H. Sullins, Director
Division of Water Quality
By the Authority of the Environmental Management Commission

**NOTICE:** A previous version of this permit was sent to EPA on April 12, 2011 to receive their comments. Based on comments received, changes were made and are incorporated in this document. Although many sections were rearranged based on EPA suggestions, most of the actual texts have not been modified from the April 12th version. Copies of the April 12 document with changes marked in red letters are available.

A public meeting for information exchange will be held in Raleigh at 3:00 P.M. on June 7, 2011, in the Ground Floor Hearing Room of the Archdale Building. You are also invited to submit written comments on this Draft Permit to the address below. The official comment period ends June 16, 2011.

Stormwater Permitting Unit
Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617
Attn: Boyd DeVane

Or, email them to boyd.devane@ncdenr.gov

Or, contact Boyd at 919-807-6373

See: http://portal.ncdenr.org/web/wq/ws/su/construction

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## SECTION I
## COVERAGE UNDER THE GENERAL PERMIT

Until this State of North Carolina General Permit expires or is modified or revoked, the permittee is authorized to discharge stormwater in accordance with the terms and conditions of this permit and in accordance with an approved Erosion and Sedimentation Control Plan by the North Carolina Division of Land Resources, Land Quality Section, or a delegated local program under the provisions and requirements of North Carolina General Statutes in Article 4 of Chapter 113A to the surface waters of North Carolina or to a separate storm sewer system. The permit, along with state statues (N.C.G.S. 143-215.1) and rules (NCAC 2H .0100) relating to stormwater permitting are designed to work together to assure compliance with the NPDES requirements of the Clean Water Act. Furthermore, North Carolina rules in Title 15A NCAC 2H .0126 adopt by reference the federal stormwater permitting requirements.

Any other point source discharge to surface waters of the state is prohibited unless covered by another permit, authorization or approval. The discharges allowed by this General Permit shall not cause or contribute to violations of North Carolina Water Quality Standards for surface waters and wetlands (15A NCAC 2B .0200). Discharges allowed by this permit must meet all applicable water quality certification or permit requirements as outlined in 15A NCAC 2H .0500 and 2H .1300. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.

**This General Permit is applicable to point source discharges from construction activities disturbing one or more acres of land.** The application to the Division of Land Resources or a delegated local program for approval of a local Erosion and Sedimentation Control Plan (E&SC) shall be considered to take the place of a Notice of Intent for coverage under this General Permit for those projects requiring this Permit coverage. Coverage under this General Permit shall become effective upon issuance of an approval for the Erosion and Sedimentation Control Plan by the Land Quality Section of the Division of Land Resources or delegated local program. Prior to the commencement of construction and land disturbing activities, approval of the Erosion and Sedimentation Control Plan shall be obtained.

Any owner or operator not wishing to be covered or limited by this General Permit may apply for an individual NPDES permit in accordance with NPDES procedures in 15A NCAC 2H .0100, stating the reasons supporting the request. Any application for an individual permit should be made at least 180 days prior to the time the permit is needed unless waived, by the Director.

This General Permit does not cover activities or discharges covered by an individual NPDES permit until the individual permit has expired or has been rescinded. Any person conducting an activity covered by an individual permit but which could be covered by this General Permit may request that the individual permit be rescinded and coverage under this General Permit be provided.

The Division of Water Quality partners with the Division of Land Resources to implement a complete program for construction site coverage that includes state sedimentation control and NPDES stormwater control. The Division of Land Resources implements their control programs through an Erosion and Sedimentation Control Plan (E&SC Plan) issued for each construction site in the state disturbing one or more acres of land. An E&SC Plan is required for each site by the Division of Land Resources or a delegated local government program. The NPDES Construction Stormwater permit (NCG010000) is attached to Erosion and Sedimentation Control Plan approvals. The permittee is responsible for abiding by the conditions of both of these documents.

The Sedimentation Pollution Control Act of 1973 places a duty upon the Sedimentation Control Commission to "develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques appropriate for use by persons engaged in land-disturbing activities." The Sedimentation Control Commission and the Division of Land Resources have adopted the North Carolina Erosion and Sediment Control Planning and Design Manual as the document to provide that guidance for use at all constructions sites in the state. The individual Erosion and Sedimentation Control Plans are developed based on this guidance and become a condition of the Division of Water Quality's Construction Stormwater General Permit. As provided in this permit, "deviation from the approved E&SC Plan, or approved amendment to that plan, shall constitute a violation of the terms and conditions of this general permit."

## SECTION II
## STORMWATER POLLUTION PREVENTION REQUIREMENTS

The State construction-related stormwater pollution prevention program provides for: (1) identification of the potential sources of stormwater pollution at the individual construction site; (2) description of the stormwater control measures to reduce or eliminate pollutants in stormwater discharges from the construction site; and (3) identification of the procedures the operator will implement to comply with the terms and conditions of this general permit and the Erosion and Sedimentation Control Plan (E&SC). In North Carolina, the following two documents contain the provisions necessary to meet the federal regulatory provisions of the NPDES program.

1) The approved Erosion and Sedimentation Control Plan
2) The NC Construction General Permit

### SECTION II.A. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE E&SC PLAN

The E&SC program is mandated and funded according to state statutes. The majority of the technology-based requirements needed to satisfy the federal stormwater pollution prevention specifications are addressed in the approved E&SC plan. Each applicant for an E&SC plan approval is required to comply with a "checklist" of over 50 site-specific conditions*. The categories of these conditions include:

1) location information,
2) site features,
3) control measures,
4) drainage features,
5) stormwater calculations,
6) stabilization,
7) ownership information and
8) construction sequencing.

*The individual requirements to be addressed in each E&SC plan application can be found at http://portal.ncdenr.org/web/lr/erosion . See "Plan check list for designers."

### SECTION II.B. - STORMWATER POLLUTION PREVENTION REQUIREMENTS IN THE NC CONSTRUCTION GENERAL PERMIT

In addition to the stormwater pollution prevention controls found in the E&SC Plan, this Construction General Permit contains additional conditions that must be met in order to comply with the NPDES permit. They are as follows:

**1) Construction Site Pollutants**

Permittee must manage activities on the site such that no adverse impacts to water quality occur from site activities or allowed discharges. In addition to stream pollution from sediment discharge, other activities on construction and development sites can result in pollutants reaching the state's waters. The permittee must manage activities on the site such that no adverse impacts to water quality occur from any of these activities. EPA has prepared guidance documents that provide best management practices that address many activities: (See http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=min_measure&min_measure_id=4)

The following activities, and others on a site-specific basis, require oversight throughout the construction and development process to assure that all water quality standards are protected:

a) Equipment Operation and Maintenance - Equipment utilized during the construction activity on a site must be operated and maintained in such a manner as to prevent the potential or actual pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be discharged onto the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the waters, surface or ground, of the state and in accordance with applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the extent practicable and disposed of in a manner so as not to allow their entry into the waters, surface or ground, of the state.
b) Material Handling - Herbicide, pesticide, and fertilizer usage during the construction activity shall be consistent with the Federal Insecticide, Fungicide, and Rodenticide Act and shall be in accordance with label restrictions.
c) Building Material Waste Handling
    i) All wastes composed of building materials shall be disposed of in accordance with North Carolina General Statutes, Chapter 130A, Article 9 - Solid Waste Management, and rules governing the disposal of solid waste (North Carolina Administrative Code Section 15A NCAC 13B).
    ii) Identify and locate areas dedicated for management of land clearing and demolition debris, construction and domestic waste, and hazardous or toxic waste. This location shall be at least 50 feet away from storm drain inlets and surface waters unless it can be shown that no other alternatives are reasonably available.
    iii) Dumping of paint and other liquid building material wastes in storm drains is prohibited.
    iv) Litter and Sanitary Waste - The permittee shall control the management and disposal of litter and sanitary waste from the site.
d) Location of Stock Piles - Identify and locate earthen-material stock pile areas at least 50 feet away from storm drain inlets, surface waters unless it can be shown that no other alternatives are reasonably available. A reduction of this distance requirement will be allowed on a case-by-case basis if the permitting authority determines that the design of the stock pile with a reduced buffer will adequately protect the water quality in adjacent streams.
e) Handling of Concrete
    i) Concrete materials onsite, including excess concrete, must be controlled and managed to avoid contact with surface waters, wetlands or buffers. No concrete or cement slurry shall be discharged from the site. (Note that discharges from onsite concrete plants require coverage under a separate NPDES permit – NCG140000)
    ii) All liquid and solid wastes generated by concrete washout operations must be contained in a leak-proof containment facility or impermeable liner. Plastic lining material should be a minimum of 10 mil polyethylene sheeting, or similar-strength material, and free of holes or tears that compromise the impermeability of the material.

iii) All washout operations must be at least 50 feet from storm drains or waterbodies unless individual site difficulties make this requirement impractical. A reduction of this distance requirement will be allowed on a case-by-case basis if the permitting authority determines that the washout facility with a reduced buffer will adequately protect the water quality in adjacent streams.
iv) Washout of concrete trucks shall be performed in designated areas only.
v) A sign must be installed adjacent to each washout facility to inform concrete equipment operators about the requirement to use the facility.
vi) The hardened residue from the concrete wash out will be disposed of in the same manner as other non-hazardous construction waste materials or may be broken up and used on site as deemed appropriate by the Contractor. Maintenance of the washout is to include removal of hardened concrete. Facility shall have sufficient volume to contain all the concrete waste resulting from washout and a minimum freeboard of 12 inches. Facility shall not be filled beyond 95% capacity and shall be cleaned out once 75% full unless a new facility is constructed.
vii) Portable, removable containers may be used as above grade concrete washouts provided truck operators are able to wash individual chute sections out over the washout.
viii) If stored liquids have not evaporated and the washout is nearing capacity, the liquids may be vacuumed and disposed of off-site in a legally acceptable manner or disposed of on-site in a manner and location that it will not reach streams and other bodies of water. On-site pits and other infiltration devices will be acceptable if the device is designed to infiltrate the anticipated volume of water and approved prior to its use by the permitting authority.

**2) Ground Stabilization**

a) Soil stabilization shall be achieved on any area of a site where land-disturbing activities have temporarily or permanently ceased according to the following schedule:
   i) All perimeter dikes, swales, ditches, perimeter slopes and all slopes steeper than 3 horizontal to 1 vertical (3:1) shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 7 calendar days from the last land-disturbing activity.
   ii) All other disturbed areas shall be provided temporary or permanent stabilization with ground cover as soon as practicable but in any event within 14 calendar days from the last land-disturbing activity.
b) Conditions - In meeting the stabilization requirements above, the following conditions or exemptions shall apply:
   i) Extensions of time may be approved by the permitting authority based on weather or other site-specific conditions that make compliance impracticable.
   ii) All slopes 50’ in length or greater shall apply the ground cover within 7 days except when the slope is flatter than 4:1. Slopes less than 50’ shall apply ground cover within 14 days except when slopes are steeper than 3:1, the 7 day-requirement applies.
   iii) Any sloped area flatter than 4:1 shall be exempt from the 7-day ground cover requirement.
   iv) Slopes 10’ or less in length shall be exempt from the 7-day ground cover requirement except when the slope is steeper than 2:1.
   v) Although stabilization is usually specified as ground cover, other methods, such as chemical stabilization, may be allowed on a case-by-case basis.
   vi) For portions of projects within one mile and draining to trout waters and High Quality Waters as classified by the Environmental Management Commission, stabilization with ground cover shall be achieved as soon as practicable but in any event on all areas of the site within 7 calendar days from the last land-disturbing act.
   vii) For portions of projects located in Outstanding Resource Waters watersheds as classified by the Environmental Management Commission, stabilization with ground cover shall be

achieved as soon as practicable but in any event on all areas within 7 calendar days from the last land-disturbing act.

viii) Portions of a site that are lower in elevation than adjacent discharge locations and are not expected to discharge during construction may be exempt from the temporary ground cover requirements if identified on the approved E&SC plan or added by the permitting authority.

**3) Self Inspection and Reporting Requirements**

Minimum self inspection and reporting requirements are as follows unless otherwise approved in writing by the Division of Water Quality.

a) A rain gauge shall be maintained in good working order on the site unless another rain-monitoring device has been approved by the permitting authority.

b) A written record of the daily rainfall amounts shall be retained and all records shall be made available to DWQ or authorized agent upon request (Note: if no rainfall occurred, the permittee must record "zero").

c) Erosion and sedimentation control measures shall be inspected to ensure that they are operating correctly. Inspection records must be maintained for each inspection event and for each measure. At a minimum, inspection of measures must occur at the frequency indicated below:

   i) All erosion and sedimentation control measures must be inspected by or under the direction of the permittee at least once every seven calendar days, and

   ii) All erosion and sediment control measures must be inspected by or under the direction of the permittee within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

   iii) Times when a determination that adverse weather conditions prevented inspections should be documented on the Inspection Record.

d) Once land disturbance has begun on the site, stormwater runoff discharge outfalls shall be inspected by observation for erosion, sedimentation and other stormwater discharge characteristics such as clarity, floating solids, and oil sheens. Inspections of the outfalls shall be made at least once every seven calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain per 24 hour period.

e) Inspections are only required to be made during normal business hours. When adverse weather conditions would cause the safety of the inspection personnel to be in jeopardy, the inspection can be delayed until it is deemed safe to perform these duties. If the inspection cannot be done on that day, it must be completed on the following business day.

f) Twenty-four Hour Reporting for visible sediment deposition

   i) The permittee shall report to the Division of Water Quality central office or the appropriate regional office any visible sediment being deposited in any stream or wetland or any noncompliance which may endanger health or the environment. (See Section IX of this permit for contact information.) Any information shall be provided orally or electronically within 24 hours from the time the permittee became aware of the circumstances. Visible discoloration or suspended solids in the effluent should be recorded on the Inspection Record as provided below.

   ii) A written submission shall be provided to the appropriate regional office of the DWQ within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the sediment deposition and actions taken to address the cause of the deposition. The Division of Water Quality staff may waive the requirement for a written report on a case-by-case basis.

g) Records of inspections made during the previous 30 days shall remain on the site and available for agency inspectors at all times during normal working hours, unless the permitting authority provides a site-specific exemption based on unique site conditions that make this requirement not practical. Older records must be maintained for a period of one year after project completion and made available upon request. The records must provide the details of each inspection including observations, and actions taken in accordance with this permit. The

permittee shall record the required rainfall and monitoring observations on the "Inspection Record for Activities Under Stormwater General Permit NCG010000" form provided by the Division or a similar inspection form that is inclusive of all of the elements contained in the Division's form. Electronic storage of records will be allowed if approved by the permitting authority.

h) Inspection records must include, at a minimum, the following:
   i) Control Measure Inspections: Inspection records must include at a minimum: 1) identification of the measures inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) indication of whether the measures were operating properly, 5) description of maintenance needs for the measure, 6) corrective actions taken and (7) date of actions taken.
   ii) Stormwater Discharge Inspections: Inspection records must include at a minimum: 1) identification of the discharge outfall inspected, 2) date and time of the inspection, 3) name of the person performing the inspection, 4) evidence of indicators of stormwater pollution such as oil sheen, floating or suspended solids or discoloration, 5) indication of visible sediment leaving the site, 6) actions taken to correct/prevent sedimentation and 7) date of actions taken.
   iii) Visible Sedimentation Found Outside the Site Limits: Inspection records must include: 1) an explanation as to the actions taken to control future releases, 2) actions taken to clean up or stabilize the sediment that has left the site limits and 3) the date of actions taken.
   iv) Visible Sedimentation Found in Streams or Wetlands: All inspections should include evaluation of streams or wetlands onsite or offsite (where accessible) to determine if visible sedimentation has occurred.

i) Visible Stream Turbidity - If the discharge from a site results in visible stream turbidity, inspection records must record that evidence and actions taken to reduce sediment contributions.Sites discharging to streams named on the state's 303(d) list as impaired for sediment-related causes may be required to perform additional monitoring, inspections or application of more-stringent management practices if it is determined that the additional requirements are needed to assure compliance with the federal or state impaired-waters conditions. If a discharge covered by this permit enters a stream segment that is listed on the Impaired Stream List for sediment-related causes, and a Total Maximum Daily Load (TMDL) has been prepared for those pollutants, the permittee must implement measures to ensure that the discharge of pollutants from the site is consistent with the assumptions and meets the requirements of the approved TMDL. The DWQ 303(d) list can be found at: http://h2o.enr.state.nc.us/tmdl/General_303d.htm/

4.) **Sediment Basins**

Sediment basins and traps shall meet the following requirements.

a) Design requirements - Outlet structures shall be utilized that withdraw water from the surface. Small sediment basins or traps installed will be exempt from the surface withdrawal requirement if they meet the following specifications:
   i) have a drainage area of less than 1.0 acre,
   ii) basins can dewater in 2-5 days, and
   iii) have a storage volume of 3600 cu/ft

b) Chemical treatment
   i) All treatment chemicals must be stored in leak-proof containers that are kept under storm-resistant cover or surrounded by secondary containment structures designed to protect adjacent surface waters.
   ii) All treatment chemicals must be used in accordance with dosing specifications and application rates provided by the manufacturer, supplier and as specified by the Division of Water Quality

iii) The Permittee must only use chemicals that have been approved by the NC DWQ and posted on their "North Carolina DWQ Approved PAMS/Flocculants List" found on their web site at: http://portal.ncdenr.org/web/wq/ws/su .

iv) The Permittee must route stormwater treated with polymers, flocculants, or other treatment chemicals through sediment trapping, filtering, and/or settling devices(s) to ensure adequate removal of sediment flocculent prior to discharge to surface waters.

c) Discharge requirement - Discharges must meet the statutory requirements of the Erosion and Sediment Control Act and utilize the provisions of Section 6.74 of the Erosion and Sediment Control Planning and Design Manual to assure that buffers and vegetated areas will be used to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity.

**5.) Discharges to Special or Threatened Waters**

a) Disturbed areas within one mile of and draining to waters where federally-listed threatened or endangered aquatic species are present shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. These project shall also use control measures that are designed, installed and maintained in accordance with criteria set forth in 15A NCAC 04B .0124 – Design Standards in Sensitive Watersheds. The Division of Water Quality may require additional/alternative protection measures in the stormwater pollution prevention plan or require coverage under an individual Construction NPDES Stormwater permit.

b) Construction activities in trout waters and High Quality Waters require special ground cover provisions as specified in Section II.B.2.b. of the permit.

## SECTION III
## FRAMEWORK OF PERMIT COVERAGE

During the period beginning on the effective date of the permit and lasting until expiration, the Permittee is authorized to discharge stormwater associated with construction activity including clearing, grading and excavation activities resulting in the disturbance of land and related support activities. Such discharges shall be controlled, limited and monitored as specified in this permit.

1) Implementation of the E&SC plan:
   a) The Permittee must implement the plan, which has been approved by the approval authority.
   b) The approved plan is considered a requirement or condition of this general permit.
   c) Deviation from the approved plan, or approved amendment to the plan, shall constitute a violation of the terms and conditions of this general permit except that deviation from the approved plan will be allowed:
      i) to correct an emergency situation where sediments are being discharged off the site, or,
      ii) when minor modifications have been made for the purpose of improving the performance of the erosion and sedimentation control measures and documentation of the minor modification has been provided on the site plan. A minor modification means an alteration or relocation of an erosion or sedimentation control measure that does not affect the ability of the measure to perform as intended.
   d) Allowed deviations from the approved plan must be noted on the approved plan maintained at the job site.
   e) Prior to the commencement of any land disturbance onsite, a copy of the approved erosion and sedimentation control plan and this NPDES construction permit shall be maintained on the site. These documents must be kept current and up to date.
2) Consistent with the provisions contained in this permit and the E&SC plan, the permittee must select, install, implement and maintain best management practices (BMPs) and control measures that minimize pollutants in the discharge to meet the requirements of this permit.

3) If there is evidence indicating that the stormwater discharges from the site are impacting or have the potential to impact surface waters or wetlands, the Division of Water Quality may take appropriate actions including any or all of the following:
   a) take compliance and enforcement action,
   b) require the permittee to include and implement appropriate control and restoration measures,
   c) require the permittee to develop and implement additional site-specific stormwater pollution prevention measures as part of their SWPPP,
   d) require the permittee to obtain an individual permit.

4) When an Individual Permit may be Required - The Director may require any owner/operator authorized to discharge under a certificate of coverage issued pursuant to this general permit to apply for and obtain an individual permit or a general permit with additional conditions. Any interested person may petition the Director to require an individual permit pursuant to 15A NCAC 2H .0127. Cases where an individual permit may be required include, but are not limited to, the following:
   a) The receiving stream is of a unique quality and the standard conditions may not provide adequate protection;
   b) The discharger is a significant contributor of pollutants;
   c) Conditions at the permitted site change, altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;
   d) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
   e) The discharge violates the terms or conditions of this general permit;
   f) Effluent limitations are promulgated for the point sources covered by this general permit;
   g) A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this general permit.

5) When an Individual Permit may be Requested - Any permittee operating under this general permit may request to be excluded from the coverage of this general permit by applying for an individual permit. When an individual permit is issued to an owner/operator the applicability of this general permit is automatically terminated on the effective date of the individual permit.

## SECTION IV
## OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1) Proper Operation and Maintenance - The permittee shall at all times properly operate and maintain all control measures and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this general permit.
2) Need to Halt or Reduce not a Defense - It shall not be a defense for a permittee in an enforcement action that it was necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this general permit.
3) Bypassing of Stormwater Control Facilities
   a) Bypass Not Exceeding Limitations.
      The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Paragraphs b. and c. of this section.
   b) Notice
      i) Anticipated bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

ii) Unanticipated bypass - The permittee shall submit notice to the Division contact (See Section III.F.) within 24 hours of the occurrence of an unanticipated bypass.

c) Prohibition of Bypass
Bypass is prohibited and the Director may take enforcement action against a permittee for bypass, unless:
i) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
ii) There were no feasible alternatives to the bypass, such as the use of auxiliary control facilities, retention of stormwater or maintenance during normal periods of equipment downtime or dry weather. This condition is not satisfied if adequate backup controls should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
iii) The permittee submitted notices as required under Paragraph b. of this section.

d) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Paragraph c. of this section.

4) Upsets
a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment or control facilities, inadequate treatment or control facilities, lack of preventive maintenance, or careless or improper operation.
b) Effect of an Upset - An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
c) Conditions Necessary for a Demonstration of Upset - A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
i) An upset occurred and that the permittee can identify the cause(s) of the upset;
ii) The permitted facility was at the time being properly operated;
iii) The permittee submitted notice of the upset as required in this general permit, and,
iv) The permittee complied with any remedial measures required in this general permit.
d) Burden of Proof - In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.
e) Inspection and Entry - The permittee shall allow the Director or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:
i) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this general permit;
ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this general permit;
iii) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and
iv) Sample or monitor at reasonable times, for the purposes of assuring general permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## SECTION V
## PERMIT ADMINISTRATION AND COMPLIANCE ISSUES

1) Time of compliance - The permittee shall comply with the limitations and controls specified for stormwater discharges once disturbance has begun on the site and until completion of construction or development and the establishment of a permanent stabilization. At the completion of construction, the permittee shall submit a Notice of Termination (N.O.T.) to the permitting authority requesting a final inspection. The N.O.T. shall certify the site is complete, permanent stabilization has been achieved and discharges associated with construction activity are no longer present. The permittee shall continue inspections and recordkeeping until issued a completion of construction letter or an inspection report indicating completion of construction by the permitting authority.
2) Operation efficiency - During construction and until the completion of construction or development and the establishment of permanent stabilization, the permittee shall provide the operation and maintenance necessary to operate the storm water control measures and all erosion and sedimentation control measures at optimum efficiency. (Note: Completion of construction may be signified by the Division of Land Resources or approved local program closing the site or certifying that the site is complete).
3) Corrective action - If inspections required by this permit identify a need for maintenance of control measures, modifications or additions to control measures, or corrective actions to control sediment or other pollutants these actions must be performed as soon as possible and before the next storm event to maintain the effectiveness of the control measures.
4) Duty to Comply - The permittee must comply with all conditions of this general permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; certificate of coverage termination, revocation and reissuance, or modification; or denial of a certificate of coverage upon renewal application.
   a) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
   b) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $27,000 per day for each violation. The Clean Water Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or

limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars ($25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: NC General Statute 143-215.6A].

d) Any person may be assessed an administrative penalty by the Administrator of the U.S. Environmental Protection Agency for violating section 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500. Penalties for Class II violations are not to exceed $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500.

5) Duty to Mitigate - The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

6) Civil and Criminal Liability - Except as provided in Section II.E. of this permit regarding bypassing of stormwater control facilities, nothing in this general permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.

7) Oil and Hazardous Substance Liability - Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.

8) Property Rights - The issuance of this general permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

9) Severability - The provisions of this general permit are severable, and if any provision of this general permit, or the application of any provision of this general permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this general permit, shall not be affected thereby.

10) Duty to Provide Information - The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the certificate of coverage issued pursuant to this general permit or to determine compliance with this general permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this general permit.

11) Signatory Requirements

a) All applications, reports, or information submitted to the Director shall be signed and certified as follows:

i) For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means: (a) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (b) the manager of one or more manufacturing production or operating facilities provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

ii) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

iii) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

b) All reports required by the general permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i) The authorization is made in writing by a person described above;

ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

iii) The written authorization is submitted to the Director.

c) Any person signing a document under paragraphs a. or b. of this section shall make the following certification:

> "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

12) Penalties for Tampering -The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this general permit shall, upon conviction, be punished by a fine of not more than $l0,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

13) General Permit Modification, Revocation and Reissuance, or Termination - The issuance of this general permit does not prohibit the Director from reopening and modifying the general permit, revoking and reissuing the general permit, or terminating the general permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. seq.

18) Availability of Reports - Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, discharge data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.
19) Penalties for Falsification of Reports - The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this general permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $l0,000 per violation, or by imprisonment for not more than two years per violation, or by both.
20) Anticipated Noncompliance - The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with the general permit requirements.
21) Other Information - Where the permittee becomes aware that it failed to submit any relevant facts in any report to the Director, it shall promptly submit such facts or information.
22) Limitations Reopener - This general permit shall be modified or alternatively, revoked and reissued, to comply with any applicable effluent guideline or water quality standard issued or approved under Sections 302(b) (2) (c), and (d), 304(b) (2) and 307(a) of the Clean Water Act, if the effluent guideline or water quality standard so issued or approved:
    a) contains different conditions or is otherwise more stringent than any effluent limitation in the general permit; or
    b) controls any pollutant not limited in the general permit.
    c) The general permit as modified or reissued under this paragraph shall also contain any other requirements in the Act then applicable.

## SECTION VI
## CONTINUATION OF PREVIOUSLY PERMITTED PROJECTS

Projects and their corresponding activities permitted under the previous version of the NC general permit for construction activities will continue to be valid with the previous permit conditions and will be considered covered under this general permit.

## SECTION VII
## DISCHARGE MONITORING AND TURBIDITY LIMITATIONS

This General Permit does not include requirements for numeric limits for discharges from construction sites. However, the next reissuance of this North Carolina Construction General Permit (NCG 01) is scheduled for five years from the date of approval of this permit and will contain effluent limitations as required in *Subpart B-Construction and Development Effluent Guidelines* of Part 450 of the Code of Federal Regulations.

## SECTION VIII
## DEFINITIONS

1) Act or "the Act" or CWA - The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 USC 1251, et. seq.
2) Best Management Practices (BMPs) - Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operation procedures,

and management practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

3) Bypass - The intentional diversion of stormwater from any portion of a stormwater control facility.
4) Control Measures - Refers to any BMP or other structural or non-structural practices and procedures used to prevent or reduce the discharge of pollutants including practices to control erosion and sedimentation.
5) Director - The Director of the Division of Water Quality.
6) DWQ or Division - The Division of Water Quality, Department of Environment, and Natural Resources.
7) EMC - The North Carolina Environmental Management Commission.
8) Erosion and Sedimentation Control Plan - A plan developed in compliance with the North Carolina Sedimentation Pollution Control Act of 1973 to prevent the erosion and deposition of sediment and other materials into the waters of the State from construction or other land-disturbing activities that disturb one or more acres of land. Each plan must be approved by the NC Sedimentation Control Commission or a program delegated by the Commission to a local government.
9) Ground cover - Any vegetative growth or other material which, when applied to the soil surface, renders the soil surface stable against accelerated erosion.
10) Normal Business Hours - These are generally considered to be between the hours of 6 a.m. and 6 p.m., or when workers are normally present on the construction site. Weekends and federal holidays are not considered normal business hours unless construction activities are taking place on the site during those times.
11) Permitting Authority - The permitting authority is the agency that issues the permit. The Division of Water Quality (DWQ) is the delegated NPDES permitting authority and issues this permit. However, some erosion and sedimentation control activities are performed by Division of Land Resources (DLR) or the locally-delegated programs. Other activities may be shared by the two divisions and the local programs. The Land Quality Section of the DLR and the Water Quality Section of the DWQ maintain a Memorandum of Agreement that specifies specific roles of the two divisions and the local programs and will be used to assign specific control and oversight activities between the agencies.
12) Permanently Cease - When all or part of the land disturbing activity is complete and no additional alteration or disturbance of the land surface is planned prior to final stabilization.
13) Permanent Stabilization - When all soil disturbing activity is completed and exposed soils have been stabilized with a vegetative cover with a density of at least 80% or covered with a structural stabilization method. Permanent perennial vegetation may include the use of sod, shrubs and ground cover plants mixed with mulching, aggregate or other landscaping techniques. Structural methods include concrete, asphalt, retaining wall or other stabilization techniques.
14) Permittee -The person, firm or organizational entity that signed as the financially responsible party on the Erosion and Sedimentation Control Plan.
15) Point Source Discharge - Any discernible, confined and discrete conveyance, including but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, discrete fissure, or container from which pollutants are or may be discharged to waters of the state.
16) Soil Stabilization - The use of vegetative, physical or chemical coverage techniques that will restrain accelerated erosion on disturbed soils for temporary or permanent control needs.
17) Stormwater Pollution Prevention Plan (SWPPP) – The elements of the State's stormwater pollution prevention program that provide the technology-based requirements designed to protect the state's waters from the adverse impacts of sediments. Those elements are documented in the combination of Section II.B. of this permit, and the Erosion and Sedimentation Control Plan. It should be noted that on sites that involve multiple or complex sources of pollution, the Division may require additional control measures as needed to assure that water quality is protected.

18) Temporarily Cease - When all or part of the site that is and will remain un-worked for a period of days but where site land disturbing activity is not complete and additional land disturbing activity is planned.
19) Temporary Stabilization – When the establishment of ground cover over all disturbed areas (such as mulching, rolled erosion control products, vegetation, or other material) renders the surface stable against accelerated erosion. Stabilization shall be achieved with the establishment of a uniform and evenly-distributed (i.e., without large bare areas) ground cover with a cover density of at least 80%.
20) Severe property damage – Substantial physical damage to property, damage to the control measures that cause them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

## SECTION IX
## NC DIVISION OF WATER QUALITY CONTACTS

**Asheville Regional Office**
2090 U.S. Highway 70
Swannanoa, NC 28778
828/296-4500
FAX 828/299-7043

**Fayetteville Regional Office**
Systel Building,
225 Green St., Suite 714
Fayetteville, NC 28301-5094
910/433-3300
FAX 910/486-0707

**Mooresville Regional Office**
610 East Center Ave.
Mooresville, NC 28115
704/663-1699
FAX 704/663-6040

**Raleigh Regional Office**
Mail to:
1628 Mail Service Center
Raleigh, NC 27699-1628

3800 Barrett Drive
Raleigh, NC 27609
919/791-4200
FAX 919/571-4718

**Washington Regional Office**
943 Washington Square Mall
Washington, NC 27889
252/946-6481
FAX 252/975-3716

**Wilmington Regional Office**
127 Cardinal Drive Extension
Wilmington, NC 28405
910/796-7215
FAX 910/350-2004

**Winston-Salem Regional Office**
585 Waughtown Street
Winston-Salem, NC 27107
336/771-5000
FAX 336/771-4630