

**Environmental Management Commission's  
Statement of Impact of Proposed Amendment to  
Exclude Gravel from "Built-Upon Area"**

The Environmental Management Commission (EMC) seeks to amend 15A NCAC 02H .1002 in order to comply with a recent change in state law. Such an amendment is authorized by Section 51.(d) of the Session Laws.

Specifically, during the recent legislative session, N.C.G.S. § 143-214.7 was amended to exclude gravel from the definition of "built-upon area." Act of Aug. 23, 2013, sec. 51.(a), 2013 N.C. Sess. Laws 413. The legislation, however, did not define the term "gravel." Within the stone, sand and gravel industry, gravel is defined as "a loose aggregate of small rounded water-worn or pounded stones." In addition, per the "Standard Test Method for Particle-Size Analysis of Soil" as published by the American National Standards Institute (ASTM) as Standard D422-63, gravel is classified to have a diameter ranging from 2.00 millimeters up to 4.74 millimeters. Such material is often used as walkways through gardens and yards or around vegetation as it is permeable, allowing adequate drainage for precipitation yet harder and more aesthetically pleasing than exposed soil. Placement of gravel is normally conducted during dry periods and heavy vehicular and foot traffic is avoided in the gravel area during and immediately after its placement to avoid compaction of the subsurface to allow water to infiltrate into the subsoil. In contrast, laypersons often imprecisely use the term "gravel" to refer to *any* aggregate material, such as the non-gravel crushed stone material that is used in constructing roads or parking lots. Such material may be either impervious due to compaction at the time of installation or partially impervious but installed on a compacted surface that does not allow water to infiltrate into the subsoil. As a result, if an aggregate crushed stone material as opposed to gravel is used, it could cause water (including pollutants and sediment) to runoff the surface at higher velocities and volumes than the stormwater and sedimentation control measures were designed for and can handle. In this way, stormwater designs may be overwhelmed or bypassed and the unintended consequence may be the gradual or catastrophic release of pollutants and sediment into the environment, either by short-circuiting through or completely failing under-designed stormwater and sedimentation control measures.

Other statutes that use the term "gravel" also use the terms "rock" and/or "stone." These include the definition of minerals in the Mining Act (Gen. Stat. section 74-49), requirements for haulers under the Motor Vehicle Act (Gen. Stat. section 20-116), the definition of a conversation agreement (Gen. Stat. section 121-35) and the authority of the Department of Transportation to acquire land and materials (Gen. Stat. section 136-9). By using the separate terms "gravel," "stone" and "rock" together, the General Assembly has recognized that these materials are different from each other but has not needed to define them because they are grouped together in these statutes. However, in this instance, the General Assembly revised N.C.G.S. § 143-214.7 to include an exception for "gravel." However, the exception in the revised statute does not apply to "stone" or "rock." Since the amendment of N.C.G.S. § 143-214.7 became effective in August, the regulated community, in dealings with the Division of Energy, Mineral, and Land Resources (DEMLR), has questioned how to interpret the imprecise use of the term "gravel" in the amended statute. For these reasons, the EMC is pursuing temporary rulemaking to define the term used in the amended statute in accordance with industry standards, to prevent adverse environmental impacts, and to direct the regulated community to the established guidelines set forth in the DEMLR's best management practices for stormwater control.