TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to adopt the rules cited as 15A NCAC 02H .0150-.0154, .1014-.1017 and amend the rules cited as 15A NCAC 02H .0126, .1002, .1005.*

Proposed Effective Date: *Upon Legislative Approval*

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): The Session Laws from which these requirements are being moved from state that a public hearing is not required for moving the requirements to the rules. This is because the requirements are not changing from what is currently being implemented. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4)*

Reason for Proposed Action: *The two Session Laws (SL), 2006-246 and 2008-211, disapproved and replaced permanent rules, 2H .0126, 2H .1014, and 2H .1005, adopted by the EMC. The requirements of SL 2006-246 have been implemented since they became effective on July 1, 2007. The requirements of SL 2008-211 have been implemented since they became effective on October 1, 2008. These SL's state that the EMC may adopt rules to replace the rules that were disapproved within the SL's, but the EMC cannot change the requirements. These draft rules are placing the same requirements of the SL's that are currently being implemented, back into the EMC's rules. This is being done to reduce confusion for the regulated community and our staff by having all the stormwater requirements together in the 2H rules. There is no change to the current requirements being implemented by adopting these rules. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4).*

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, the Session Laws do not allow the EMC to make changes to the current requirements being implemented in the session laws. So, even with objections, the requirements copied from the SL's cannot be changed. (S.L. 2006-246, Section 15; S.L. 2008-211, Section 4).*

Comments may be submitted to: *Robert Patterson, NCDENR - DWQ - SPU, 1617 Mail Service Center, Raleigh, NC 27699-1617, Phone (919)807-6300, Fax (919)807-6494, E-Mail robert.patterson@ncdenr.gov*

Comment period ends: *January 14, 2011*

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. Also see S.L. 2006-246, Section 15 and S.L. 2008-211, Section 4.*

Fiscal Impact:

☐ **State**
☐ **Local**
☐ **Substantial Economic Impact** (≥$3,000,000)
☒ **None**

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs), subject to NPDES permitting, shall be issued NPDES ~~Permits~~ permits for stormwater discharges to surface ~~waters~~ waters, ~~shall be issued~~ in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0154, and United States Environmental Protection Agency (EPA) regulations 40 CFR ~~122.21~~122.21, ~~and 122.26~~122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. ~~Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six dollars ($36.00) each plus four dollars ($4.00) shipping and handling. Copies are also available at the Division of Environmental Management, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.~~ These federal regulations can be accessed on the world wide web at http://www.gpoaccess.gov/cfr/index.html. State regulations can be accessed on the world wide web at http://www.ncoah.com/rules.

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

15A NCAC 02H .0150 DEFINITIONS

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

(1) The definitions set out in 15A NCAC 02H .1002 (Definitions).

(2) "Division" means the Division of Water Quality in the Department.

(3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county may exercise the powers authorized by Article 18 of Chapter 153A of the General Statutes.

(4) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

(5) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

(6) "Sensitive receiving waters" means any of the following:

(a) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with Paragraphs (d) and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures).

(b) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended.

(c) Waters for which the designated use, as described by the classification system set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures), have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313.

(7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 2B .0222 (Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).

(8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).

15A NCAC 02H .0151 DESIGNATION AND PETITION PROCESS

(a) 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 Paragraph.

(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.

(2) State designation process: The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below.

(A) Designation schedule: The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).

(B) Identification of candidate regulated entities: The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:

(1) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.

(2) Serves a public entity that has not been designated pursuant to 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% 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 2B .0101 (Procedures for Assignment of Water Quality Standards – General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream Classifications).

(E) Notice of designation: The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.

(F) Application schedule: A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.

(3) Designation under a total maximum daily load (TMDL) implementation plan: The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item 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.

(b) Petition Process: A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management as follows:

(1) Connected discharge petition: An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

(2) Adverse impact petition: Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(A) Petition review: The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management if the petitioner shows any of the following:

(i) The municipal separate storm sewer system (MS4) or the discharge discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation.

(ii) The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to receiving waters.

(iii) The municipal separate storm sewer system (MS4) or the discharge 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.

(B) Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:

(i) Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.

(ii) Scientific or technical literature that supports the sampling methods.

(iii) Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.

(iv) A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.

(v) For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.

(vi) For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.

(C) Water quality protection program offset. – If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management. 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). The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.

(3) Petition administration: The Commission shall process petitions in the following manner:

(A) The Commission shall only accept petitions submitted on Department forms.

(B) A separate petition must be filed for each municipal separate storm sewer system (MS4) or discharge.

(C) The Commission shall evaluate only complete petitions. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information; and the Commission will determine, within 90 days of receipt of the additional information, whether the information completes the petition.

(D) The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.

(E) The Commission shall post all petitions on the Division Web site and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for at least 30 days from the date of posting.

(F) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period, and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

(G) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

(i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, any petitions for that municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management.

(ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge must present new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.

(H) The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, the Commission shall notify the owner or operator of the municipal

separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater 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.

(c) Exemption: A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

(d) Waiver: The Department may waive the Phase II National Pollutant Discharge Elimination System (NPDES) permit requirement pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e).

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

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.

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

(A) An area delineated pursuant to Item (2) of this Paragraph.

(B) 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 2B.0212.

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

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

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

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

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

(vii) The Coastal Stormwater Program – 15A NCAC 2H.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.

(xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B.0223.

(C) 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.

(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.

(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 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).

(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).

15A NCAC 02H .0153 PROGRAM IMPLEMENTATION

(a) Permit Standards: To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management, an applicant shall, to the extent authorized by law, develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures required by 40 Code of Federal Regulations 122.34(b). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations 122.34(b)(5) shall be conducted as provided in Rule .0154(a) of this Section. Regulated entities may propose using any existing State or local program that relates to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

(b) Implementation Schedule: The requirements of this act shall be implemented as follows:

(1) A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b), and .0152 of this Section.

(2) Public education and outreach minimum measures shall be implemented no later than 12 months from date of permit issuance.

(3) A regulated entity must implement its post-construction program no later than 24 months from the date the permit is issued.

(4) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.

(c) Federal and State Projects: The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management that applies to the particular project, then the project is subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit: The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations 122.34(b)(5) shall require a permittee to meet the standards set out in Rule .0154(a) of this Section but shall not impose any requirement on the permittee that exceeds the standards set out in Rule .0154(a) of this Section. After the Commission has issued a

Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit set out in 40 Code of Federal Regulations § 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

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

15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES

(a) Requirements for Post-Construction Practices:

(1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) Low Density Option: A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(B) High Density Option: A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:

(i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

(ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

(iii) Remove an 85 percent average annual amount of Total Suspended Solids.

(iv) Meet the General Engineering Design Criteria set out in 15A NCAC 2H .1008(c).

(v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.

(2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.

(3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

(4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.

(5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

(B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

(C) Meet the requirements of 15A NCAC 02H .1005(a)(2).

(7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

(B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

(B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

(A) Water Supply Watershed I (WS-I) – 15A NCAC 02B.0212.

(B) Water Supply Watershed II (WS-II) – 15A NCAC 02B.0214.

(C) Water Supply Watershed III (WS-III) – 15A NCAC 02B.0215.

(D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B.0216.

(E) Freshwater High Quality Waters (HQW) – 15A NCAC 02H .1006.

(F) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 02H .1007.

(G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B.0235.

(H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B.0258.

(I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B.0251.

(10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5).

(11) Nothing in this Paragraph shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

(b) Exclusions from Post-Construction Practices: The post-construction practices required by Paragraph (a) of this Rule shall not apply to any of the following:

(1) Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

(A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

(B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

(C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:

(i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.

(ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.

(D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a).

(E) A vested right to the development pursuant to common law.

(2) Redevelopment as defined in Rule .0150 of this Section.

(c) Exceptions: The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

(1) An exception may be granted if the application meets all of the following criteria:

(A) Unnecessary hardships would result from strict application of the act.

(B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(C) The hardships did not result from actions taken by the petitioner.

(D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

(2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:

(A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

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

SECTION .1000 - STORMWATER MANAGEMENT

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Other words and phrases used in this Section are defined as follows:

(1) "Built-upon Area" means that portion of a development project that is covered by impervious or partially impervious ~~cover including~~ surface including,but not limited to, ~~buildings,~~ buildings;~~pavement,~~ pavement and gravel areas such as ~~roads~~ roads, ~~and~~ parking ~~areas~~ lots, and paths; and recreation facilities ~~(e.g.,~~such as tennis courts~~courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).~~ "Built upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

(2) "CAMA Major Development Permits" mean those permits or revised permits required by the Coastal Resources Commission according to 15A NCAC 7J Sections .0100 and .0200.

(3) "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.

(4) "Coastal Counties" include Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

(5) "Curb Outlet System" means curb and gutter installed in a development which meets low density criteria [Rule .1003(d)(1) of this Section] with breaks in the curb or other outlets used to convey stormwater runoff to grassed swales or vegetated or natural areas and designed in accordance with Rule .1008(g) of this Section.

(6) "Development" means any land disturbing activity ~~which~~ that increases the amount of built-upon area or ~~which~~ that otherwise decreases the infiltration of precipitation into the soil.

(7) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.

(8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.

(9) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) authorizing a category of similar activities or discharges.

(10) "Infiltration Systems" mean stormwater control systems designed to allow runoff to pass or move (infiltrate/exfiltrate) into the soil.

(11) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit and takes the place of "application" used with individual permits.

(12) "Off-site Stormwater Systems" mean stormwater management systems that are located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.

(13) "On-site Stormwater Systems" mean the systems necessary to control stormwater within an individual development project and located within the project boundaries.

(14) "Redevelopment" means any ~~rebuilding~~ land disturbing activity ~~which~~ that ~~has no~~ does not result in a net increase in built-upon area ~~or which~~ and that provides ~~equal or~~ greater or equal stormwater control than the previous development (stormwater controls shall not be allowed where otherwise prohibited).

(15) "Seasonal High Water Table" means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.

(16) "Sedimentation/Erosion Control Plan" means any plan, amended plan or revision to an approved plan submitted to the Division of Land Resources or delegated authority in accordance with G.S. 113A-57.

(17) "Stormwater" is defined in G.S. 143, Article 21.

(18) "Stormwater Collection System" means any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule .1003(d)(1) in this Section.

(19) "10 Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

(20) "Water Dependent Structures" means a structure for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and boat storage areas are not water dependent uses.

(21) "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.

(22) "Vegetative Buffer" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.

(23) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and which provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.

(24) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(25) "BMP" means Best Management Practice.

(26) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. Permeable pavement materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics. Compacted gravel shall not be considered permeable pavement.

(27) "Residential development activities" has the same meaning as in 15A NCAC 02B .0202(54).

(28) "Vegetative conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).

15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES

(a) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties: All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in Items (1), (2), and (3) below. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006.

(1) Development Near Outstanding Resource Waters (ORW): Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of Rule .1007 of the Section and shall be permitted as follows:

(A) Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:

(i) The development has a built upon area of 12 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.

(iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(B) High Density Option: Development shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:

(i) The development has a built upon area of greater than 12 percent.

(ii) The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126.

(iii) The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development (LID) stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the greater of, runoff from all surfaces generated by one and one-half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one-year, 24-hour storm. Wet detention ponds may be used as a stormwater control system to meet the requirements of this Subparagraph (1)(B)(iii), provided that the stormwater control system fully complies with the requirements of Subparagraph (1)(B). If a wet detention pond is used within one-half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of Subparagraph (1)(B).

(iv) Stormwater runoff from the development that is in excess of the design volume must flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of Class SA waters.

(v) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(C) Stormwater Discharges Prohibited: All development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:

(i) Infiltration of the stormwater runoff from the design storm as described in Subparagraph (1)(B)(iii).

(ii) Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in Subparagraph (1)(B)(iii). Notwithstanding the other requirements of this Rule, the infiltration mandated in this Subparagraph (1)(C)(ii) does not require a minimum separation from the seasonal high-water table.

(iii) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of Subparagraph (1)(C).

(D) Limitation on the Density of Development: Development shall be limited to a built upon area of 25 percent or less.

(2) Development Near Class SA Waters: Development activities within one-half mile of and draining to those waters classified by the Commission as Class SA waters or within one-half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of Subparagraphs (1)(A), (B), and (C). The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001-404.

(3) Other Coastal Development: Development activities within the Coastal Counties except those areas described in Items (1) and (2) of this Paragraph shall meet all of the following requirements:

(A) Low-Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:

(i) The development has a built upon area of 24 percent or less. A development project with an overall density at or below the low-density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low-density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.

(iii) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(B) High-Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:

(i) The development has a built upon area of greater than 24 percent.

(ii) The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with Rule .1008 of this Section.

(iii) Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one-half inch of rainfall.

(iv) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.

(b) Requirements for Limited Residential Development in Coastal Counties: For residential development activities within the 20 Coastal Counties that are located within one-half mile and draining to Class SA waters, that have a built upon area greater than 12 percent, that will add more than 10,000 square feet of built upon area, and that does not require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118, a one-time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:

(1) Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one-half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

(2) Direct rooftop runoff from the first one and one-half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.

(3) Install any other stormwater best management practice that meets the requirements of Rule .1008 of this Section to control and treat the stormwater runoff from all built upon areas of the site from the first one and one-half inches of rain.

(c) Requirements for Structural Stormwater Controls: Structural stormwater controls required under this Rule shall meet all of the following requirements:

(1) Remove an 85 percent average annual amount of Total Suspended Solids.

(2) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

(3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

(4) Meet the General Engineering Design Criteria set forth in Rule .1008(c) of this Section.

(5) For structural stormwater controls that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the Division may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in Rule .1008(h) of this Section. No minimum separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.

(d) Wetlands: Developments regulated by this Rule that have wetlands inside of, or adjacent to, the development must meet the following requirements:

(1) Areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

(2) Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity.

(e) Vegetative Buffer: Developments permitted under Paragraph (a) shall contain a 50 foot wide vegetative buffer, as defined in Rule .1002(22) of this Section, for new development activities and a 30 foot wide vegetative buffer for redevelopment activities. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. The Division may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.

(f) Exemptions From Vegetative Buffer Requirements: The following activities are exempt from the vegetative buffer requirements of Paragraph (e) of this Rule:

(1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g),

(2) Development in a new urban waterfront area that meets the requirements of S.L. 2004-117,

(3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H),

(4) Development of upland marinas that have received or are required to secure a CAMA Major Development Permit.

(g) Compliance with Other Rules: In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.

(h) Exclusions: The amended requirements of this Rule shall not apply to any of the following:

(1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.

(2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of this Rule that were effective at the time of the original issuance of the following authorizations:

(A) State Stormwater Permit issued under the provisions of this Rule.

(B) Stormwater Certification issued pursuant to Rule .1000 of this Section prior to 1 December 1995.

(C) A CAMA Major Development Permit.

(D) 401 Certification that contains an approved Stormwater Management Plan.

(E) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

(F) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

(G) A phased development plan approved pursuant to G.S. 153A-344.1 or G.S. 160A-385.1 that shows:

(A) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335 or G.S. 160A-371 through G.S. 160A-376.

(B) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.

(C) A vested right to the development pursuant to common law.

(H) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.

(I) Development activities for which a complete Stormwater Permit Application has been accepted by the Division prior to October 1, 2008, shall be regulated by the provisions and requirements of this Rule that were effective at the time that this application was accepted as complete by the Division. For purposes of this Rule, a Stormwater Permit Application is deemed accepted as complete by the Division when the application is assigned a permit number in the Division's Basinwide Information Management System.

(J) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of this Rule that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this Rule, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that have been previously approved for that development activity.

(K) Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Rule.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section .0100 entitled "Point Source Discharges to the Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(b) Other stormwater control requirements are mainly addressed in this Section but may also be addressed in sections dedicated to particular water classifications or circumstances. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules .1014 through .1017 of this Section. For post-construction requirements, a program will be deemed compliant for the areas that satisfy Rule .1017(a)(9) of this Section.

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

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

The definition of any word or phrase for Urbanizing Areas shall be as follows:

(1) The definitions set out in 40 Code of Federal Regulations 122.2 and 122.26(b) (1 July 2003 Edition).

(2) The definitions set out in G.S. 143-212 and G.S. 143-213.

(3) The definitions set out in 15A NCAC 02H .0103.

(4) The definitions set out in Rule .1002 of this Section, except for the definitions of "Development" and "Redevelopment", which are defined below.

(5) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(6) "BMP" means Best Management Practice.

(7) "Development" means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

(8) "Division" means the Division of Water Quality in the Department.

(9) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by G.S. 160A-19, or a county may exercise the powers authorized by G.S. 153A-18.

(10) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

(11) "Redevelopment" means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

(12) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

(13) "Sensitive receiving waters" means any of the following:

(14) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient-sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 02B .0101.

(15) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended.

(16) Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 02B .0101, have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313.

(17) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300, et seq.

(18) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

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

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 2B.0212.

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

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

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

(xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.

(E) 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.

(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.

(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).

15A NCAC 02H .1017 POST-CONSTRUCTION PRACTICES

(a) Requirements for Post-Construction Practices:

(1) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater

Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) Low Density Option: A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.

(B) High Density Option: A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:

(i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.

(ii) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.

(iii) Remove an 85 percent average annual amount of Total Suspended Solids.

(iv) Meet the General Engineering Design Criteria set out in Rule .1008(c) of this Section.

(v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.

(2) Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.

(3) Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.

(4) Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.

(5) Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.

(6) For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.

(B) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

(C) Meet the requirements of Rule .1005(a)(2) of this Section.

(7) For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.

(B) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.

(8) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:

(A) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

(B) Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.

(9) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

(A) Water Supply Watershed I (WS-I) – 15A NCAC 02B.0212.

(B) Water Supply Watershed II (WS-II) – 15A NCAC 02B.0214.

(C) Water Supply Watershed III (WS-III) – 15A NCAC 02B.0215.

(D) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B.0216.

(E) Freshwater High Quality Waters (HQW) – Rule .1006 of this Section.

(F) Freshwater Outstanding Resource Waters (ORW) – Rule .1007 of this Section.

(G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B.0235.

(H) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B.0258.

(I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B.0251.

(10) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(11) Nothing in this Paragraph (a) shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

(b) Exclusions from Post-Construction Practices: The post-construction practices required by Paragraph (a) of this act shall not apply to any of the following:

(1) Development in an area where the requirements of Paragraph (A) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

(A) A building permit pursuant to G.S. 153A-357 or G.S. 160A-417.

(B) A site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).

(C) A phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a), that shows:

(i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335.

(ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.

(D) A vested right to the development under G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a).

(E) A vested right to the development pursuant to common law.

(2) Redevelopment as defined in Rule .1015 of this Section.

(c) Exceptions: The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

(1) An exception may be granted if the application meets all of the following criteria:

(A) Unnecessary hardships would result from strict application of the act.

(B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(C) The hardships did not result from actions taken by the petitioner.

(D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

(2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:

(A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.

(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

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