

15A NCAC 02H .0151 NPDES MS4 STORMWATER: 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 the 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 CFR 122.32. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (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:
 - (i) discharges stormwater that has the potential to have an "adverse impact," as that term is defined in Rule .1002 of this Subchapter, on water quality; or
 - (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. This list shall be published on the Division website at <http://portal.ncdenr.org/web/lr/stormwater>. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for 30 days from the date of publication.
 - (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 population of the public entity is more than 15 percent greater than its population two years prior to the publication of the list identifying the public entity as a candidate for designation.
 - (iv) the municipal separate storm sewer system (MS4) discharges stormwater that has adverse impacts on water quality; or
 - (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 best usages.
 - (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 NPDES permit for stormwater management shall be submitted to the Commission.
 - (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision shall submit its application for a 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, which are incorporated herein by reference. This federal code [may be accessed at no cost at <http://www.gpo.gov/fdsys/>]. 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 NPDES permit for stormwater management shall be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item shall submit its application for a 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 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 NPDES permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate 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 NPDES permit for stormwater management as follows:
 - (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 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 stormwater 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 is a significant contributor of pollutants to receiving waters; or
 - (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 showing of adverse impact required by Part (b)(2)(A) of this Rule by providing to the Commission the following information:
 - (i) monitoring data that includes representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner shall 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) studies 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 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; or
- (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 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 best usages. 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) A separate petition shall be filed for each municipal separate storm sewer system (MS4) or discharge.
 - (B) The Commission shall evaluate petitions that contain all information required by Part (2)(B) of this Paragraph. 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 shall determine, within 90 days of receipt of the additional information, whether the information completes the petition.
 - (C) The petitioner shall provide to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge a copy of the petition and a copy of any subsequent additional information submitted to the Commission within 48 hours of each submittal.
 - (D) The Commission shall post all petitions on the Division website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for 30 days from the date of posting.
 - (E) 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.
 - (F) 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 NPDES permit for stormwater management, any other petitions for the same municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the 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 NPDES permit for stormwater management, an

additional petition for the municipal separate storm sewer system (MS4) or discharge shall present new information as required by Part (2)(B) of this Paragraph or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as incomplete.

- (G) The Commission shall evaluate a petition within 180 days of the date on which it is determined to contain all information required by Part (2)(B) of this Paragraph. 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 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 shall submit its application for a 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 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 requirement for a NPDES permit for stormwater management pursuant to 40 CFR 122.32(d) or (e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246;
Eff. July 3, 2012;
Readopted Eff. January 1, 2017.