

15A NCAC 02H .1017 NPDES MS4 AND URBANIZING AREAS: POST-CONSTRUCTION REQUIREMENTS

The purpose of this Rule is to minimize the impact of stormwater runoff from new development on the water quality of surface waters and to protect their best usages.

- (1) **IMPLEMENTING AUTHORITY.** The requirements of this Rule shall be implemented by permittees, delegated programs, and regulated entities in accordance with Rule .0151 of this Subchapter and Rule .1016 of this Section.
- (2) **APPLICABILITY.** This Rule shall apply to all development subject to Rule .1016 of this Section or that disturbs one acre or more of land, including a development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and is subject to a local NPDES post-construction stormwater program pursuant to Rule .0153 of this Subchapter. Where this Rule is administered by the Division, it shall not apply to projects that are subject to any of the following rules:
 - (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) High Quality Waters (HQW) in Non-Coastal Counties – 15A NCAC 02H .1021;
 - (f) Outstanding Resource Waters (ORW) in Non-Coastal Counties – 15A NCAC 02H .1021;
 - (g) Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (h) Tar-Pamlico River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (i) Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251;
 - (j) Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0265;
 - (k) Falls Reservoir Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0277;
 - (l) Coastal Counties: Stormwater Management Requirements – 15A NCAC 02H .1019;
 - (m) Goose Creek Watershed: Stormwater Control Requirements – 15A NCAC 02B .0602; or
 - (n) Universal Stormwater Management Program – 15A NCAC 02H .1020.
- (3) **GENERAL REQUIREMENTS FOR DEVELOPMENT.** In addition to the requirements of this Rule, development shall comply with Rule .1003 of this Section.
- (4) **PROJECT DENSITY.** A project shall be considered a low density project if it meets the low density criteria set forth in Rule .1003(2) of this Section and contains no more than 24 percent built-upon area or no more than two dwelling units per acre; otherwise, a project shall be considered high density. Low density projects shall comply with the requirements set forth in Rule .1003(2) of this Section. High density projects shall comply with the requirements set forth in Rule .1003(3) of this Section.
- (5) **REQUIRED STORM DEPTH.** For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve "runoff volume match" in lieu of "runoff treatment" as those terms are defined in Rule .1002 of this Section.
- (6) **OPERATION AND MAINTENANCE PLANS.** Permittees and regulated entities shall implement and delegated programs shall require an operation and maintenance plan for SCMs in accordance with Rule .1050 of this Section. In addition, the operation and maintenance plan shall require the owner of each SCM to annually submit a maintenance inspection report on each SCM to the local program or regulated entity.
- (7) **FECAL COLIFORM REDUCTION.** Regulated entities and delegated programs shall implement a fecal coliform reduction program that controls, to the maximum extent practicable, sources of fecal coliform. At a minimum, the program shall include a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment system component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.

- (8) **DEED RESTRICTIONS AND PROTECTIVE COVENANTS.** Restrictions and protective covenants shall be recorded by permittees or regulated entities 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 and in accordance with Rule .1003(7) of this Section.
- (9) **PROJECTS IN AREAS DRAINING TO SENSITIVE RECEIVING WATERS.** Additional requirements shall apply to projects located in areas draining to certain sensitive receiving waters as follows:
- (a) projects subject to the Class SA waters requirements of Rule .1019 of this Section shall meet those requirements and shall use SCMs that result in the highest degree of fecal coliform die-off and control sources of fecal coliform to the maximum extent practicable;
 - (b) projects located in areas draining to Trout waters shall use SCMs that avoid a sustained increase in the receiving water temperature; and
 - (c) projects located in areas draining to Nutrient Sensitive Waters shall use SCMs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. Delegated programs and regulated entities may implement a nutrient application management program for inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State. In areas subject to a Nutrient Sensitive Water Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Stormwater Management Program requirements are set forth in 15A NCAC 02B .0200.
- (10) **VEGETATED SETBACKS.** Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be required in accordance with Rule .1003 of this Section and shall be at least 30 feet in width. Vegetated setbacks from such waters shall be required if the water 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 which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/> 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) which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.usgs.gov/pubprod/>. Relief from this requirement may be allowed when surface waters are not present in accordance with 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Item (12) of this Rule.
- (11) **EXCLUSIONS.** Development shall not be subject to this Rule if it 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 in which the development is located, 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" as defined by G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to this Rule, if the Commission is responsible for implementation of the requirements of this Rule, that shows:
 - (i) for the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. 153A-335; and
 - (ii) for any subsequent phase of development, sufficient detail that demonstrates to the permitting authority that implementation of the requirements of this Rule to that phase of development would require a material change in that phase of development as contemplated in the phased development plan. Sufficient detail may include documentation of financial expenditures and contractual obligations, a copy of an approved site-specific development plan, and a narrative of how the new rules will require a material change to the subsequent phase or phases of development;

- (d) a vested right to the development pursuant to G.S. 153A-344(b), G.S. 153A-344.1, G.S. 160A-385(b), or G.S. 160A-385.1 issued by a local government that implements this Rule; or
 - (e) a vested right to the development pursuant to common law.
- (12) 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 of Item (10) of this Rule as well as the deed restrictions and protective covenants requirement of Item (8) of this Rule as follows:
- (a) An exception shall be granted if the application meets all of the following criteria:
 - (i) unnecessary hardships would result from strict application of the requirement, and these hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property, and not as a result from actions taken by the petitioner; and
 - (ii) the requested exception is consistent with the spirit, purpose, and intent of this Rule; 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.
 - (b) Notwithstanding Sub-Item (a) of this Item, exceptions shall be granted in any of the following instances:
 - (i) 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 SCMs; or
 - (ii) when there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including water, sewer, or gas construction and maintenance corridor; as long as it is located 15 feet landward of all perennial waterbodies, perennial streams, and intermittent streams 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 SCMs.

A lack of practical alternatives may be shown by demonstrating that, considering the potential for an alternative configuration, or a reduction in size or density of the proposed activity, the basic project purpose may not be practically accomplished in a manner that would avoid or result in less adverse impact to surface waters.
 - (c) Conditions and safeguards may be imposed upon any exception granted in accordance with G.S. 143-215.1(b).
 - (d) Delegated programs and regulated entities shall document the exception procedure and submit an annual report to the Department on all exception proceedings.
 - (e) Appeals of the Department's exception decisions shall be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions shall be made to the appropriate Board of Adjustment or other appropriate local governing body, pursuant to G.S. 160A-388 or G.S. 153A-345.1.
- (13) In order to fulfill the post-construction minimum control 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 SCMs, incorporate the post-construction model practices described in this Section, or develop its own comprehensive watershed plan that meets the post-construction stormwater management measure required by 40 CFR 122.34(b)(5) (1 July 2015 Edition), which is incorporated by reference, not including subsequent amendments and editions. A copy of the reference material may be accessed at no cost at <http://www.gpo.gov/fdsys/>.

- (14) Nothing in this Rule shall alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2008-198; Eff. July 3, 2012; Readopted Eff. January 1, 2017.