

**15A NCAC 02H .1206 WATER QUALITY SPECIAL ORDERS BY CONSENT**

**(a) Applications for Water Quality Special Orders by Consent:**

- (1) A person that accepts responsibility for causing or contributing to pollution of the waters of the State may apply for a Special Order by Consent (Order, or SOC). Applications shall be submitted to the Division of Water Resources. An Order establishes a schedule of corrective actions necessary to achieve compliance and alternative limitations that will be effective until corrective actions are completed or until the completion date specified in the Order, whichever comes first.
- (2) Applications by permittees shall be made in triplicate on forms supplied by the Division along with a nonrefundable four hundred dollars (\$400.00) processing fee. The application form shall include the following information:
  - (A) applicant's name, title, and contact information;
  - (B) facility name and permit number (if applicable);
  - (C) date of pre-application meeting with the appropriate Regional Office of the Division and the name of the Division's representative at the meeting;
  - (D) a description of the existing treatment process, a summary of violations of permit conditions or limits, and an explanation of the circumstances contributing to the violations;
  - (E) if a flow increase is requested, actual and proposed plant flows and flow allocations and demonstration of the need for the flow increase per Paragraph (c) of this Rule; only facilities owned by a unit of government may request a flow increase, per G.S. 143-215.67(b);
  - (F) the results of an evaluation of the treatment units, operational procedures, and performance of the existing facility conducted by the permittee or other person. The person preparing these results shall sign the document. The evaluation shall include the following:
    - (i) a determination that noncompliance is not due to failure by the permittee to operate, manage, and maintain the wastewater disposal system and that the existing wastewater disposal system is being operated in such a way as to attain, under the existing conditions, the highest degree of treatment for which it was designed;
    - (ii) recommendations as to how the efficiencies of these facilities can be maximized;
    - (iii) a certification that the facilities cannot be operated in a manner that would achieve compliance with permit limits; and
    - (iv) a determination of the permit limits that the facility can be expected to meet if operated at its maximum efficiency during the term of the SOC. These may include interim limits for the various phases of construction.
  - (G) a predicted schedule for activities necessary to achieve permit compliance;
  - (H) a list of funding sources to be used to complete the proposed activities and bring the facility into compliance. The list shall indicate whether the funds have been secured or can be secured in time to conform to the schedule in Part (I) of this Subparagraph. If the permittee has applied for but not secured funding, it shall provide copies of those applications. If the permittee cannot verify that it has secured the necessary funding, it may propose alternative steps to achieving compliance with its permit;
  - (I) other information relevant to the Director's evaluation of the application, including:
    - (i) unavoidable future violations of permit conditions or limits;
    - (ii) a description of any process modifications that have been made to date to ensure optimum performance of existing facilities;
    - (iii) a description of collection system rehabilitation work completed or scheduled (including dates);
    - (iv) a description of any coordination with industrial users or actions taken to address their contribution to the permit violations;
    - (v) any other actions taken to correct problems and achieve compliance prior to applying for the SOC.
    - (vi) the date and results of the last Industrial Waste Survey; and

- (vii) whether or not the facility is acting as a regional facility receiving wastewater from other municipalities having independent pretreatment programs;
- (3) Applications shall be signed as follows:
  - (A) in the case of a City or Town, by a ranking elected official or other duly authorized employee;
  - (B) in the case of a corporation, company, industry, or other private entity, by a principal executive officer of at least the level of vice-president, or his duly authorized representative;
  - (C) in the case of a School District, by the Superintendent of Schools or other duly authorized employee;
  - (D) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner; and
  - (E) in the case of a sole proprietorship, by the proprietor.
- (4) If an application is incomplete or if the Division staff determines that additional information is necessary to its review of the application, the Director shall notify the applicant of the additional items or information required to complete the application. If the applicant does not complete its application within 60 days of the notification, the Director may return the application to the applicant and terminate the Division's review. The applicant must submit a new application, revised to address the deficiencies already noted and with a new processing fee, to renew its request for an Order.
- (b) Development of the Special Order: Special Orders by Consent shall satisfy the following requirements:
  - (1) The compliance schedule in the SOC shall establish compliance dates for milestones, such as the start of construction, completion of construction, and achievement of final compliance, to ensure that the applicant makes continued progress toward achieving compliance with its permit requirements. No compliance date in the schedule shall follow the preceding compliance date by more than one year.
  - (2) For permitted facilities, interim effluent limitations may be established within the SOC. Interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system, as demonstrated by the applicant in Subparagraph (a)(4) of this Rule. Tiered interim effluent limitations may be established in the SOC to reflect the operational capabilities of the facility during different phases of construction.
  - (3) To ensure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. A monetary settlement may also be included in the order to settle previous violations.
  - (4) The permittee shall be responsible for funding necessary improvements to its wastewater disposal system and for paying any monetary settlement and stipulated penalties included in the SOC.
- (c) No public utility or unit of government shall accept or agree to accept wastewater flows that exceed the capacity of its wastewater disposal system, except as provided in G.S. 143-215.67 and as follows:
  - (1) The Director shall not allow additional flows as part of a consent Order unless the following demonstrations are made. The Director shall then determine the allowable additional flows based on Parts (A) – (E) of this Subparagraph and in accordance with G.S. 143-215.67:
    - (A) New or improved wastewater treatment facilities will be constructed that will treat the existing and additional waste, or the permittee can adopt alternative steps to offset the impacts of the additional waste.
    - (B) The flows are needed to provide service to identified new residential, commercial, and industrial sources.
    - (C) The waste characteristics of the additional flows do not exceed those associated with domestic waste or are pretreated to domestic strengths. Volumes of non-pretreated industrial waste will be allocated as the calculated volume of their domestic strength equivalent. Additionally, waste of greater than domestic strength may be accepted if the parameters are not those for which interim limitations have been developed and the additional waste will not adversely affect the treatment efficiency of the treatment system for any modified parameter or result in the violation of any other permit limitation.
    - (D) Local legal authorities, including, but not limited to, adoption and implementation of industrial waste control and pretreatment ordinances, will be used to control new and proposed industrial waste tributary to the system.

- (E) The cumulative impacts of wastewater allowed under the order will not result in any significant degradation in the quality of the waters ultimately receiving the wastewater during flow conditions between and including the 7-day, 10-year minimum flow (7Q10) and the average flow. The division must consider any special or protected waters, such as High Quality Waters, Water Supply Waters, Trout Waters and Shellfish Waters in conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:
- (i) a predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added shall not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater shall be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l, unless approval is granted by the Environmental Management Commission. In making this decision, the Commission shall consider criteria such as naturally occurring background dissolved oxygen levels and projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater shall be allowed into the system;
  - (ii) a predictive increase in the length of the segment in which the predicted dissolved oxygen is less than dissolved oxygen standards of 0.5 miles or greater;
  - (iii) an increase in coliform bacteria density predicted to exceed applicable water quality standards;
  - (iv) increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters that are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule; or
  - (v) the proposed addition of toxic pollutants in quantities not associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater does not cause the combined wastewaters to exhibit reasonable potential to cause an exceedance of water quality standards.
- (2) Approvals of additional wastewater flows may be rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he or she considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director shall consider factors such as the parameters being violated, the magnitude of the violations, the projected duration of the violations, the waters being impacted or projected to be impacted and the reasons for the violations. Upon a determination by the Director that the approval of a flow allocation is to be rescinded, he or she shall provide notice to the permittee that shall include the factors that made the decision necessary.

*History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3D;  
Eff. August 3, 1992;  
Readopted Eff. May 1, 2020.*