

## SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

### SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

#### 15A NCAC 02H .0101 PURPOSE

(a) These Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).

(b) Rules and Statutes referenced in this Section may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations:

- Permits and Engineering Unit, Archdale Building  
P.O. Box 29535, 512 N. Salisbury St.,  
Raleigh, N.C. 27626-0535
- Raleigh Regional Office  
3800 Barrett Dr.,  
Raleigh, N.C. 27611
- Asheville Regional Office  
59 Woodfin Pl.,  
Asheville, N.C. 28802
- Mooresville Regional Office  
919 N. Main St.,  
Mooresville, N.C. 28115
- Fayetteville Regional Office  
Wachovia Bldg. Suite 714,  
Fayetteville, N.C. 28301
- Washington Regional Office  
1424 Carolina Avenue,  
Washington, N.C. 27889
- Wilmington Regional Office  
127 Cardinal Drive Extension,  
Wilmington, N.C. 28405-3845
- Winston-Salem Regional Office  
8025 North Point Blvd.,  
Winston-Salem, N.C. 27106

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1;  
Eff. February 1, 1976;  
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, 1984.*

#### 15A NCAC 02H .0102 SCOPE

These Rules apply to all persons:

- (1) discharging or proposing to discharge waste to the surface waters of the state; or
- (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (3) operate or propose to operate a treatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (4) discharging or proposing to discharge stormwater which results in water pollution.

This Rule does not apply to those persons who have obtained a permit from a local pretreatment control authority, authorized to issue such permits, and whose pretreatment program was approved in accordance with Section .0900 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987; December 1, 1984.*

### **15A NCAC 02H .0103 DEFINITION OF TERMS**

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
  - (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
  - (3) "Commission" means the Environmental Management Commission.
  - (4) "Committee" means the NPDES committee of the Environmental Management Commission.
  - (5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.
  - (6) "Department" means the Department of Environment and Natural Resources.
  - (7) "Director" means the Director of the Division of Water Quality, Department of Environment and Natural Resources or his designee.
  - (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
  - (9) "Division" means the Division of Water Quality, Department of Environment and Natural Resources.
  - (10) "EPA" means the United States Environmental Protection Agency.
  - (11) "Existing", with respect to implementing the NPDES permitting program, means:
    - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
    - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
    - (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.
  - (13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
  - (14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.
  - (15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
  - (16) "New", with respect to implementing the NPDES permitting program, means:
    - (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
    - (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
    - (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

- (17) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.
- (18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (22) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
- (23) "POTW" means Publicly Owned Treatment Works.
- (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is 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 (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.
- (26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
- (30) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources.
- (31) "Stormwater" is defined in G.S. 143, Article 21.
- (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.
- (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.
- (34) "Trout farm" means a facility for the commercial production of trout.
- (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

*History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;*

*Temporary Amendment Eff. May 11, 2001;*  
*Temporary Amendment Expired on February 26, 2002;*  
*Amended Eff. April 1, 2003.*

#### **15A NCAC 02H .0104 REQUIRED PERMITS**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a);*  
*Eff. February 1, 1976;*  
*Amended Eff. December 1, 1984;*  
*Repealed Eff. November 1, 1987.*

#### **15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES**

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources.

The State NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	All municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry.
Short Form A:	Any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial or process and commercial discharges except
EPA Forms 1 and 2-C:	cooling waters, cooling tower blowdown, and boiler blowdown.
EPA Forms 1 and 2F:	Discharges consisting entirely of stormwater associated with industrial activity.
EPA Forms 1 and 2D:	Discharges consisting of stormwater and non-stormwater.
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.

The Authorization to Construct and Notice of Intent application forms to be used will be supplied by the Division.

#### **(b) Permit Fees.**

- (1) Permit Application Processing Fees. For every application for new or renewed NPDES permits, Notice of Intent to be covered by a general permit or Authorization to Construct, a nonrefundable application processing fee in the amount stated in Subparagraph (b)(5) of this Rule shall be submitted at the time of application.
  - (A) Each permit or renewal application is incomplete until the processing fee is received.
  - (B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
  - (C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.
  - (D) An application processing fee of one hundred dollars (\$100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.
  - (E) A full processing fee will be charged for modifications other than those listed in Rule .0114(b) of this Section; this fee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for new applications/modifications.
  - (F) Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, according to the schedule in Subparagraph (b)(5) of this Rule.
  - (A) Collection of annual fees shall begin on the effective date of this Rule.
  - (B) Annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.

- (C) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
  - (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
  - (E) A person with multiple permits may have annual fees consolidated into one annual bill.
  - (F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.
  - (G) Permit Application Processing Fees and Annual Administering and Compliance Monitoring Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in Subparagraph (b)(5) of this Rule.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
  - (4) Failure to pay an annual fee within 30 days after being billed may cause the Division to initiate action to revoke the permit.
  - (5) Schedule of Fees:

Category	Permit Application Processing Fee		Annual Administering And Compliance Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance
<b>&gt;10,000,000 GPD</b>				
Industrial	\$400.	\$400.	\$1500.	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.
<b>1,000,001 - 10,000,000 GPD</b>				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.
<b>100,001 - 1,000,000 GPD</b>				
Industrial	400.	250.	800.	600.
Domestic/Cooling Water	400.	250.	600.	450.
<b>1,001 - 100,000 GPD</b>				
Industrial	400.	200.	600.	450.
Domestic/Cooling Water	400.	200.	450.	300.
<b>&lt;=1,000 GPD and Single family dwelling</b>				
	240.	240.	0	0
<b>Stormwater - Municipal Separate</b>				

Stormwater System	400.	400.	600.	450.
Industrial Activity	400.	400.	600.	450.
Stormwater				
General Permits				
Construction (Stormwater)	50.	50.	n/a	n/a
Domestic	240.	240.	n/a	n/a
Others	400.	400.	n/a	n/a
Authorization to Construct (Permitted Flow)				
>=100,001 GPD	200.	n/a	n/a	n/a
<=100,000 GPD	150.	n/a	n/a	n/a
<=1,000 GPD	100.	n/a	n/a	n/a

- (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars (\$7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per year.
- (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:
- (A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars (\$75.00);
- (B) Single family dwellings, forty dollars (\$40.00);
- (C) All other facilities, zero.
- (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.
- (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.
- (10) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section may pay the lower fees set in Subparagraph (b)(5) of this Rule for the appropriate general permit.
- (c) Applicants for new NPDES permits requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:
- (1) a description of the origin, type and flow of waste which is proposed to be discharged. Justification and a demonstration of need shall be provided for expected flow volumes. Flow shall be determined in accordance with 15A NCAC 2H .0219(1);
  - (2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;
  - (3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment

capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;

- (4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/ivers, etc.);
- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
- (6) special studies or modeling may be required in cases where the impacts of the discharge cannot be readily determined by the Division;
- (7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).

(d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the Director, or shall file in triplicate, an engineering proposal setting forth the information required in Paragraph (c) of this Rule.

(e) Applications for permit renewals shall be accomplished by filing the appropriate application form as listed in Paragraph (a) of this Rule, with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources, at least 180 days prior to expiration of a permit. Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and may be returned to the applicant.

(f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of Environmental Management.

(g) Applications for permits for new discharges which propose to discharge industrial process or domestic wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water to the surface waters shall file, in addition to the applications and supporting documents required in Paragraphs (a) and (b) of this Rule, an assessment which shall meet the requirements of 1 NCAC 25 .0502. Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.

(h) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.

(j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix D which are hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00).

*History Note:* Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); 143-215.3B;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, 1988.

(a) Permit applications shall be filed with the Director, Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.

(d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) Permit applications filed with the Director shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;
- (2) in the case of a partnership or a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue separate permits for these activities:

- (1) filter backwash and draining associated with swimming pools;
- (2) filter backwash from raw water intake screening devices;
- (3) condensate from residential or commercial air conditioning units;
- (4) individual non-commercial vehicle washing operations;
- (5) flushing and hydrostatic testing water associated with utility distribution systems;
- (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
- (7) groundwaters generated by well construction or other construction activities;
- (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;
- (9) street wash water;
- (10) flows from fire fighting; and
- (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following specific conditions:
  - (A) the volume of discharge produced by the decontamination activity is too large to be contained on-site;
  - (B) the Division of Water Quality is informed prior to commencement of the discharge from the decontamination activity;
  - (C) overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity; and
  - (D) the discharge is not radiologically contaminated.

*History Note: Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978; Temporary Amendment Eff. May 11, 2001; Temporary Amendment Expired on February 26, 2002; Amended Eff. April 1, 2003.*

#### **15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION**

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into



waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Division of Environmental Health, Department of Environment, Health, and Natural Resources, for review and written approval.

(b) The Director shall acknowledge receipt of a complete NPDES or Authorization to Construct application or, if not complete, may return the application to the applicant as incomplete or request the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

- (1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. On-site investigations will not be necessary for Authorization to Construct permits, activities covered under general permits and renewal of individual permits with no modifications.
- (2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the permit, it shall if necessary make the following additional determinations in writing:
  - (A) proposed effluent limitations for those pollutants proposed to be limited;
  - (B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
  - (C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft permit.

(d) In the case of permits for which notice of intent is given on forms as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with an explanation of the inadequacies.

*History Note: Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c); Eff. February 1, 1976; Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, 1987.*

#### **15A NCAC 02H .0108 FACT SHEETS**

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application which includes at least the following:
  - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
  - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
  - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required under Rule .0107 of this Section;
- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and
- (5) a more detailed description of the procedures for the formulation of final determinations than that given in a public notice including:
  - (A) the 30-day comment period required by Rule .0110 of this Section,
  - (B) procedures for requesting a public meeting and the nature thereof, and
  - (C) any other procedures by which the public may participate in the formulation of the final determinations.

(b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987.*

**15A NCAC 02H .0109 PUBLIC NOTICE**

(a) Notice of Application

- (1) Public notice of each complete individual NPDES permit application and each general NPDES permit shall be circulated in the geographical areas of the proposed discharge by the Director at least 45 days prior to any proposed final action:
  - (A) by publishing the notice one time in a newspaper having general circulation in said county; and
  - (B) by mailing the notice to all persons or agencies listed in Subsection (c) of this Rule.
- (2) The notice shall set forth at least the following:
  - (A) name, address, and phone number of the agency issuing the public notice;
  - (B) name and address of each applicant;
  - (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
  - (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
  - (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
  - (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
  - (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.
- (3) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and Authorizations to Construct shall not be required.

(b) Notice of Public Meeting

- (1) Notice of public meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the Director at least 30 days prior to the date of the meeting:
  - (A) by publishing the notice one time in a newspaper having general circulation in said county;
  - (B) by mailing the notice to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
  - (C) by mailing the notice to any person or group upon request.
- (2) The notice of any public meeting shall include at least the following:
  - (A) name, address, and phone number of agency holding the public meeting;
  - (B) name and address of each applicant whose application will be considered at the meeting;
  - (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;
  - (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
  - (E) information regarding the time and location for the meeting;
  - (F) the purpose of the meeting;
  - (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and

- (H) a brief description of the nature of the meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Environment, Health, and Natural Resources at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty-five dollars (\$25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice to the following for NPDES permits:

- (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;
- (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;
- (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;
- (5) North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health; and
- (6) Any other federal, state, or local agency upon request.

*History Note:* Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0110 RESPONSE TO PUBLIC NOTICE**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(3); 143-215.3(a)(3); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1987.

#### **15A NCAC 02H .0111 MEETINGS AND HEARINGS**

(a) Public Meetings:

- (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public meeting with respect to NPDES permit applications. Any person who desires a public meeting on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public meeting shall indicate the interest of the party filing such request and the reasons why a meeting is warranted.
- (2) The Director is delegated authority to determine if a public meeting shall be held in accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such meeting for the Commission.
- (3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.
- (4) Any meeting brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

(b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4);  
143-215.5; 143-215.1(e);

*Eff. February 1, 1976;*  
*Amended Eff. March 1, 1993; November 1, 1987.*

**15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS**

(a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to issue or deny, or, if a public meeting is held, within 90 days following the closing of the record of the meeting or in the case of an Authorization to Construct permit 90 days after the receipt of a complete application or, if a public meeting is held concerning the Authorization to Construct, within 90 days following the closing of the record of the meeting.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;
- (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;
- (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- (5) rescind a permit upon request by the permittee;
- (6) deny a permit application:
  - (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
  - (B) for a discharge prohibited by G.S. 143-214.2(a),
  - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
  - (D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
  - (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all affected states.

(d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall permits be issued for a period to exceed five years.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);*  
*Eff. February 1, 1976;*  
*Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, 1984.*

**15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS**

The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the Director will be required to obtain the permit.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);*  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1987.*

**15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS**

(a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for any of the following:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

- (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and
  - (4) refusal of the permittee to permit the Director or his authorized representative upon presentation of credentials:
    - (A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,
    - (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
    - (C) to inspect any monitoring equipment or method required in the permit, or
    - (D) to sample any discharge of pollutants.
  - (5) failure to pay the annual fee for administering and compliance monitoring.
- (b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:
- (1) modifications of the monitoring program contained in the permit,
  - (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,
  - (3) a single modification of any compliance schedule not in excess of four months,
  - (4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
  - (5) modifications to include or amend pretreatment program requirements,
  - (6) issuance of permits revoked for failure to pay the annual administering and compliance monitoring fee,
  - (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps, and similar minor changes.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);  
 Eff. February 1, 1976;  
 Amended Eff. March 1, 1993; September 1, 1988; November 1, 1987.

**15A NCAC 02H .0115 PUBLIC ACCESS**

- (a) All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets.
- (b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.
- (c) The Director shall:
  - (1) provide facilities for the inspection of information relating to permit applications and permits,
  - (2) ensure that the staff handle request for such inspections promptly,
  - (3) ensure that copying machines or devices are available for a reasonable fee.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6;  
 143-215.65;  
 Eff. February 1, 1976;  
 Amended Eff. March 1, 1993; October 1, 1987.

**15A NCAC 02H .0116 EMERGENCY PROCEDURES**

If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director shall so notify the Commission or the secretary who may exercise emergency powers pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), 143-215.6(c), or 143-215.3(a)(12).

*History Note:* Authority G.S. 143-215.3(a)(8); 143-215.13(d); 143-215.6(c);  
Eff. February 1, 1976;  
Amended Eff. December 1, 1984; November 1, 1978.

#### **15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING**

(a) Staff of the Department of Environment, Health, and Natural Resources are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 2B .0500.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7);  
143-215.1(b)(1); 143-215.3(a)(9); 143-215.63;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; November 1, 1978.

#### **15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS**

Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC 2B .0400 and the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies of the Clean Water Act may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00). That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.

*History Note:* Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987.

#### **15A NCAC 02H .0119 DISCHARGES OF 50,000 GALLONS PER DAY OR LESS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. December 1, 1984.

#### **15A NCAC 02H .0120 LIMITATION ON DELEGATION**

The Director is authorized to delegate any or all of the functions contained in this Section except the following:

- (1) denial of a permit application,
- (2) suspension of a permit,
- (3) revocation of a permit not requested by the permittee,
- (4) modification of a permit where initiated by the Division and which does not fall within the exceptions listed in Rule .0114(b) of this Section, or
- (5) determination of confidentiality.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993.

#### **15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS**

(a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

(b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are applicable without a G.S. 143-215.1 permit.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;  
Eff. December 1, 1976;  
Amended Eff. December 1, 1984.

**15A NCAC 02H .0122 CONCENTRATED ANIMAL FEEDING OPERATIONS**  
(See 15A NCAC 02T .1300)

**15A NCAC 02H .0123 REQUIREMENTS: EVALUATING FEEDLOT PERMIT APPLICATIONS**  
(See 15A NCAC 02T .1300)

*History Note:* Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1); 143-215.3(a)(1)(4);  
Eff. December 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; June 7, 1981;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0124 RELIABILITY**

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will insure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

- (1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment; and
- (2) At least one of the following:
  - (a) dual or standby power supply on site, or
  - (b) approval by the Director that the facility:
    - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
    - (ii) has sufficient storage capacity that no potential for overflow exists, or
    - (iii) can tolerate septic wastewater due to prolonged detention, and
    - (iv) would have de minimus impacts as a result of power failure, or
  - (c) a demonstration that the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;
- (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (6) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and

- (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

*History Note: Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);  
Eff. December 1, 1984;  
Amended Eff. March 1, 1993; October 1, 1987.*

#### **15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING**

(a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated. In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

(b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary to protect water quality standards, after reclamation for all peat mining operations that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- (1) all designated Primary Nursery Areas,
- (2) all designated Secondary Nursery Areas,
- (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries, and
- (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or the Wildlife Resources Commission.

(c) Drainage:

- (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed towards appropriate freshwater bodies if possible.
- (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas or other areas determined by the Commission to require this protection, the project must be designed such that the total annual water released from the site would not exceed that expected from the site covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the peak flows from the site shall be controlled by the use of basins or other management techniques which moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed project site without structures or features imposed by human agency intended to facilitate removal of surface or subsurface water. In modelling or other analysis required by this Rule, major canals existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that accurate evaluation of "undrained" conditions is not practicable. Water management systems must be designed to meet these criteria utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The frequency-duration distribution for flows leaving the site during and after mining should as much as possible match the distribution that would occur if the site were undrained and covered with mature natural vegetation.
- (3) An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years. Reduction in runoff volumes must occur at a rate



achieving constant yearly improvements as stipulated in the permit, and at no time exceed those expected under conditions existing at the time of permit issuance.

(d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c) of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively eutrophic.

(e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the various components for the water control system, including canals and settling basins, must be provided. Adequate sediment controls must be provided during maintenance and expansion of canals and water control structures.

(f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases of the project. Any substances which may be discharged during some phase of the project must be evaluated as part of the application and adequately controlled to comply with the water quality standards and to protect the uses of the waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to assure reliable control of pollution from on-site storage piles.

(g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

- (1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;
- (2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;
- (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- (4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;
- (5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, as existing on July 1, 1985. Copies may be obtained from the Director, Division of Environmental Management, Raleigh. Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important. The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

- (1) is manmade and is utilized primarily for water management and water pollution control;
- (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;
- (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);
- (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries.

The following factors can be used as guidance in determining the outlet point:

- (1) The outlet point must be entirely on the property of the permit applicant;
- (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
  - (A) without removing any established uses of the waters including navigation, fishing, and wildlife, and
  - (B) without adversely affecting drainage by other landowners;
- (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;
- (4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

*History Note:* Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);

*Eff. September 1, 1986.*

#### **15A NCAC 02H .0126 STORMWATER DISCHARGES**

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (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 addressed in Section .1000 of this Subchapter 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 for stormwater discharges to surface waters in accordance with this Rule, Rules .0150 through .0153 of this Subchapter, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 (1 July 2015 Edition) which are hereby incorporated by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. State regulations may be accessed at <http://www.ncoah.com/rules>.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);  
Eff. November 1, 1986;  
Amended Eff. August 3, 1992;  
Temporary Amendment Eff. November 1, 2002;  
Temporary Amendment returned to Agency by Rules Review Commission on January 22, 2004;  
Amended Eff. July 3, 2012;  
Readopted Eff. January 1, 2017.*

#### **15A NCAC 02H .0127 GENERAL PERMITS**

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities;
- (7) tourist gem mines;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Division of Environmental Health, Department of Environment, Health, and Natural Resources.

(c) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures

specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

(e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.

(g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

(h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.

(i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the discharge is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Division Rules; or
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (6) effluent limitations are promulgated for the point sources covered by the general permit;
- (7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
- (8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.

(k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

*History Note:* Authority G.S. 143-215(1); 143-215.3(a)(1);  
Eff. October 1, 1987;  
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988.

<b>15A NCAC 02H .0128</b>	<b>GENERAL PERMIT FOR COOLING WATERS</b>
<b>15A NCAC 02H .0129</b>	<b>GENERAL PERMIT FOR MINE DEWATERING FACILITIES</b>
<b>15A NCAC 02H .0130</b>	<b>GENERAL PERMIT FOR WATER FILTRATION FACILITIES</b>
<b>15A NCAC 02H .0131</b>	<b>GENERAL PERMIT/SWIMMING POOL FILTER BACKWASH FACILITIES</b>
<b>15A NCAC 02H .0132</b>	<b>GENERAL PERMIT FOR SEAFOOD PACKING FACILITIES</b>
<b>15A NCAC 02H .0133</b>	<b>GENERAL PERMIT/OIL STORAGE FACILITIES DISC/WS-III WATERS</b>
<b>15A NCAC 02H .0134</b>	<b>GENERAL PERMIT OTHER THAN WS-I: WS-II: OR WS-III</b>
<b>15A NCAC 02H .0135</b>	<b>GENERAL PERMIT FOR SAND DREDGES</b>
<b>15A NCAC 02H .0136</b>	<b>GENERAL PERMIT FOR TROUT FARMS</b>
<b>15A NCAC 02H .0137</b>	<b>GENERAL PERMIT FOR AQUIFER RESTORATIONS</b>

*History Note:* Authority G.S. 143-215; 143-215(1); 143-215(3); 143-215.1; 143-215.3;  
Eff. October 1, 1987;  
Amended Eff. August 1, 1988;  
Repealed Eff. August 1, 1991.

### **15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS**

(a) Required. After an NPDES permit has been issued by the Division of Environmental Management in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and an Authorization to Construct has been issued to the permittee by the Division of Environmental Management. If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application.

- (1) Application for Authorizations to Construct must be made in triplicate on official forms completely filled out, where applicable, and fully executed. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization from the permittee.
- (2) Required sets of plans and specifications:
  - (A) regular projects -- five sets of detailed plans and specifications,
  - (B) federal and state grants/loan projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;
- (3) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.
- (4) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (5) If a Sedimentation and Erosion Control Plan is required by the Division of Energy, Mineral, and Land Resources or their designee, documentation shall be provided verifying that the applicant has developed and submitted to the governing agency the required Plan.
- (6) A 110 volt power source and a potable water supply, equipped with backflow prevention, must be available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Section Chief.
- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information must be provided as specified in Rule 2H .0205 of this Subchapter.
- (8) A residuals management plan must be submitted for all wastewater treatment systems that generate residuals and must include the following:
  - (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars (\$36.00).
  - (B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.
  - (C) No authorization to construct will be issued unless the application package includes a commitment from a DEM approved residual disposal/utilization site for the acceptance of the

residual and which demonstrates that the DEM approved site has adequate capacity to accept the residuals.

- (9) A construction sequence plan must be submitted with applications for an Authorization to Construct for modification of existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.

(c) Fees for Authorization to Construct Permits

- (1) For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.
- (2) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be submitted.
- (3) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars (\$100.00) must be submitted.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987;  
Amended Eff. August 1, 2012 (see S.L. 2012-14, 3 s.1.(f)); March 1, 1993; August 3, 1992.

**15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS**

All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and comply with the minimum design requirements specified in Rule 2H .0219 of this Subchapter. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

- (1) the plans and specifications are for domestic waste from a single family dwelling with flows of 1000 gallons per day or less, and
- (2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and
- (3) the effluent limitations are for secondary treatment.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987.

**15A NCAC 02H .0140 CERTIFICATION OF COMPLETION**

Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification must be received from a professional engineer certifying that the treatment works or disposal system has been installed in accordance with the approved plans and specifications. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal system was designed by a homeowner rather than a professional engineer, either the permittee or a professional engineer must submit this certification.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987.

**15A NCAC 02H .0141 OPERATIONAL AGREEMENTS**

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of Environmental Management. The requirement for assurance of financial solvency will be made on a case by case determination.

*History Note:* Authority G.S. 143-215.1(d1);  
Eff. October 1, 1987.

**15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND**

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.

(b) In this, the Director shall:

- (1) Ensure the fiscal integrity of the fund;
- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);
- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and
- (7) Provide a quarterly accounting of the fund to the Commission.

*History Note:* Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);  
Eff. August 1, 1988.

**15A NCAC 02H .0143 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0144 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0145 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0146 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0147 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0148 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0149 RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .0150 DEFINITIONS: NPDES MS4 STORMWATER**

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b)(1 July 2015 Edition) are incorporated herein by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. The definition of any word or phrase used in the NPDES municipal separate storm sewer system (MS4) stormwater program shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended, and Rule .1002 of this Subchapter. Other words and phrases are defined as follows:

- (1) "Division" means the Division of Energy, Mineral, and Land Resources in the Department.
- (2) "MS4" means municipal separate storm sewer system.
- (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 exercises 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, 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 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 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301;
  - (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; or
  - (c) waters for which the "best usage," as described by the classification system set forth in 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301 have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313, which is incorporated herein by reference, not including subsequent amendments and editions. This federal code may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (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 have an "adverse impact," as that term is defined in 15A NCAC 02H Rule .1002 of this Subchapter, on the quality and best usage of the water body. "Best usage" of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300.
- (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.

*History Note:* Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 2006-246; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

#### **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.

#### **15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS**

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220; Eff. July 3, 2012; Amended Eff. July 1, 2013; Repealed Eff. January 1, 2017.

#### **15A NCAC 02H .0153 NPDES MS4 STORMWATER: PROGRAM IMPLEMENTATION**

(a) Permit Standards. To obtain a NPDES permit for stormwater management, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six "minimum control measures" required by 40 CFR 122.34(b). These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. The evaluation of the post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall be conducted as

provided in Rule .1017 of this Subchapter. Regulated entities may propose using any existing State or local program that relates to the minimum control measures to meet, either in whole or in part, the requirements of the minimum control measures.

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

- (1) a regulated entity shall 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 Rule .1016 of this Subchapter;
- (2) public education and outreach minimum measures shall be implemented within 12 months from date of permit issuance;
- (3) a regulated entity shall implement its post-construction program no later than 24 months from the date the permit is issued; and
- (4) the Department shall include permit conditions that establish schedules for implementation of each minimum control measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity 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 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 MS4 NPDES permit for stormwater management that applies to the particular project within North Carolina, then the project shall be 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 NPDES general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall require a permittee to meet the standards set forth in Rule .1017 of this Subchapter. After the Commission has issued a 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 notice of intent shall be submitted to the Division accompanied by the application fee as set forth in G.S. 143-215.3D. 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 NPDES permit for stormwater management set out in 40 CFR 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

(f) In order to fulfill the post-construction minimum control measure requirement for linear transportation projects, including private transportation projects constructed to North Carolina Department of Transportation standards that will be conveyed to the State or another public entity upon completion, a permittee, delegated program, or regulated entity may use the Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) developed by the North Carolina Department of Transportation which is herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at [https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014\\_BMP\\_Toolbox.pdf](https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf).

*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. 2014-1; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

## **15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES**

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

### **SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS**

- 15A NCAC 02H .0201 PURPOSE**  
(See 15A NCAC 02T .0101)
- 15A NCAC 02H .0202 SCOPE**  
(See 15A NCAC 02T .0102)
- 15A NCAC 02H .0203 DEFINITION OF TERMS**

(See 15A NCAC 02T .0103)

**15A NCAC 02H .0204 ACTIVITIES WHICH REQUIRE A PERMIT**

(See 15A NCAC 02T .0104)

**15A NCAC 02H .0205 APPLICATION: FEES: SUPPORTING INFORMATION: REQUIREMENTS**

(See 15A NCAC 02T .0105)

**15A NCAC 02H .0206 SUBMISSION OF PERMIT APPLICATIONS**

(See 15A NCAC 02T .0106)

*History Note:* Authority G.S. 130A-335; 143-213; 143-215.1; 143-215.3(a); 143-215.3(a)(1); 143-215.3B(b);  
Eff. February 1, 1976;  
Amended Eff. September 1, 1995; February 1, 1993; October 1, 1990; August 1, 1988; November 1, 1987;  
October 1, 1987; February 1, 1986; January 1, 1984;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0207 SUBMISSION OF PERMIT APPLICATION**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(d); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1986.

**15A NCAC 02H .0208 STAFF REVIEW AND PERMIT PREPARATIONS**

(See 15A NCAC 02T .0107)

**15A NCAC 02H .0209 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**

(See 15A NCAC 02T .0108)

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.1(d); 143-215.3(a)(1); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Amended Eff. February 1, 1993; August 1, 1988; October 1, 1987; February 1, 1986;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0210 NOTIFICATION OF APPLICANTS**

*History Note:* Authority G.S. 143-215.1(a); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. October 1, 1987.

**15A NCAC 02H .0211 PERMIT RENEWALS**

(See 15A NCAC 02T .0109)

*History Note:* Authority G.S. 143-215.3(e)(1);  
Eff. February 1, 1976;  
Amended Eff. February 1, 1993; October 1, 1990; October 1, 1987; January 1, 1984;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0212 ADMINISTRATIVE HEARINGS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.4; 143-215.1(e);  
Eff. February 1, 1976;  
Amended Eff. October 1, 1987;  
Repealed Eff. August 1, 1988.

**15A NCAC 02H .0213 MODIFICATION AND REVOCATION OF PERMITS**

(See 15A NCAC 02T .0110)

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(b)(2);

*Eff. February 1, 1976;*  
*Amended Eff. February 1, 1993; August 1, 1988; October 1, 1987; November 1, 1978;*  
*Repealed Eff. September 1, 2006.*

**15A NCAC 02H .0214 INVESTIGATIONS: MONITORING AND REPORTING**

*History Note: Authority G.S. 143-215.3(a); 143-215.1(b);*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1978;*  
*Repealed Eff. October 1, 1987.*

**15A NCAC 02H .0215 DELEGATION OF AUTHORITY**  
*(See 15A NCAC 02T .0112)*

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);*  
*Eff. February 1, 1976;*  
*Amended Eff. February 1, 1993; October 1, 1987; February 1, 1986;*  
*Repealed Eff. September 1, 2006.*

**15A NCAC 02H .0216 LIMITATION ON DELEGATION**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.9(d); 143-215.3(a)(4);*  
*Eff. February 1, 1976;*  
*Repealed Eff. February 1, 1986.*

**15A NCAC 02H .0217 PERMITTING BY REGULATION**  
*(See 15A NCAC 02T .0113)*

*History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.3(a),(d);*  
*Eff. February 1, 1976;*  
*Amended Eff. February 1, 1993; December 1, 1984;*  
*Repealed Eff. September 1, 2006.*

**15A NCAC 02H .0218 LOCAL PROGRAMS FOR SEWER SYSTEMS**  
*(See 15A NCAC 02T .0306)*

*History Note: Authority G.S. 143-215.1; 143-215.3(a)(1);*  
*Eff. February 1, 1986;*  
*Amended Eff. February 1, 1993; October 1, 1987;*  
*Repealed Eff. September 1, 2006.*

**15A NCAC 02H .0219 MINIMUM DESIGN CRITERIA**

**15A NCAC 02H .0220 CERTIFICATION OF COMPLETION (SEE 15A NCAC 02T .0116)**

**15A NCAC 02H .0221 OPERATIONAL AGREEMENTS (SEE 15A NCAC 02T .0115)**

*History Note: Authority G.S. 143-215.1; 143-215.1(d)(1); 143-215.3(a); 143-215.3(a)(1); 143-215.3B(c); 143-215.3B(e);*  
*Eff. October 1, 1987;*  
*Amended Eff. February 1, 1993; August 1, 1988;*  
*RRC Objection Eff. April 18, 1996 due to lack of statutory authority (.0219);*  
*Amended Eff. June 1, 1996;*  
*Repealed Eff. September 1, 2006.*

**15A NCAC 02H .0222 THE WASTEWATER TREATMENT WORKS EMERGENCY FUND**

*History Note:* Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);  
Eff. August 1, 1988;  
Amended Eff. February 1, 1993;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0223 DEMONSTRATION OF FUTURE WASTEWATER TREATMENT CAPACITIES**  
(See 15A NCAC 02T .0118)

**15A NCAC 02H .0224 TREATMENT FACILITY OPERATION AND MAINTENANCE**  
(See 15A NCAC 02T .0117)

*History Note:* Authority G.S. 143-215.3;  
Eff. February 1, 1993;  
Temporary Amendment Eff. September 13, 1993, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (.0223);  
Amended Eff. February 1, 1994;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0225 CONDITIONS FOR ISSUING GENERAL PERMITS**  
(See 15A NCAC 02T .0111)

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(l); 143-215.10C;  
Temporary Adoption Eff. November 8, 1996;  
Temporary Adoption Eff. May 8, 1997;  
Eff. August 1, 1998;  
Repealed Eff. September 1, 2006.

**15A NCAC 02H .0226 INNOVATIVE ANIMAL WASTE OPERATION PERMITS FOR SWINE OPERATIONS**

*History Note:* Authority G.S. 143-215.1; 143-215.10C; Clean Water Responsibility And Environmentally Sound Policy Act, S.L. 1997 c. 458;  
Temporary Adoption Eff. August 21, 1998;  
Temporary Adoption Expired May 11, 1999.

**15A NCAC 02H .0227 SYSTEM-WIDE COLLECTION SYSTEM PERMITTING**  
(See 15A NCAC 02T .0400)

*History Note:* Authority G.S. 143-215.1(a); 143-215.3(a),(d); NC Clean Water Act of 1999; S.L. 1999 c. 329;  
Temporary Adoption Eff. March 1, 2000;  
Eff. April 1, 2001;  
Repealed Eff. September 1, 2006.

#### **SECTION .0300 - SEPTIC TANK SYSTEMS**

**15A NCAC 02H .0301 SCOPE**  
**15A NCAC 02H .0302 TECHNICAL GUIDE FOR EVALUATION OF SOIL ABSORPTION SITES**  
**15A NCAC 02H .0303 INTERPRETATION AND TECHNICAL ASSISTANCE**  
**15A NCAC 02H .0304 TABLE NO. I**  
**15A NCAC 02H .0305 TABLE NO. II**  
**15A NCAC 02H .0306 APPLICABILITY: VIOLATIONS**

*History Note:* Authority G.S. 130A-160; 130A-335; 143-215.1; 143-215.6;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1988; February 1, 1986;  
Repealed Eff. April 1, 1994.

## SECTION .0400 - COASTAL WASTE TREATMENT DISPOSAL

### 15A NCAC 02H .0401 STATEMENT OF POLICY

It is hereby declared to be the policy of the Environmental Management Commission that all wastewater generated in the State of North Carolina shall be treated to such an extent as to insure the compliance with water quality standards promulgated by the Commission. It is further the policy of the Commission that regional and area-wide wastewater collection and treatment facilities shall be promoted to the fullest practicable extent. The Commission recognizes, however, that development of area-wide and regional sewerage systems is not always in keeping with the demands for growth within the areas and that interim regulations are necessary to insure that water quality standards are not violated. In keeping with this policy, the Commission adopts these Regulations of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1); Eff. February 1, 1976.*

### 15A NCAC 02H .0402 APPLICABILITY

These Regulations shall apply to treatment and disposal of waste from all installations located within the coastal areas which are subject to the regulations of the Environmental Management Commission.

*History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1); Eff. February 1, 1976; Amended Eff. September 13, 1981.*

### 15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS

The coastal areas for the purposes of these Regulations are defined to include:

- (1) the Outer Banks;
- (2) those land areas bordering the coastal waters, including all waters assigned a salt water "S" classification and all tributaries that have experienced excessive growths of microscopic or macroscopic vegetation or that, because of their relative size and lack of water exchange are found by the Commission to be subject to such excessive growths; and
- (3) land areas bordering all natural impoundments situated east of the line established by the North Carolina Environmental Management Commission to designate coastal waters, said land being described as follows: "Extends from a point on the North Carolina/South Carolina state line near Calabash, North Carolina, generally along the lines of the Atlantic Coast Line Railroad and Norfolk Southern Railway, northeasterly and northerly to River Mile 66.0 (Lock No. 1) on the Cape Fear River; thence northerly to River Mile 30.0 on Black River; thence easterly to River Mile 48 on the North East Cape Fear River; thence northerly and easterly to River Mile 22.5 in New River; thence easterly and northerly to River Mile 25.0 on White Oak River (Atlantic Coast Line Railroad Bridge); thence northerly and easterly to River Mile 38.9 on Neuse River (Norfolk Southern Railway Bridge); thence northerly to River Mile 44.6 on Pamlico River (Norfolk Southern Railway Bridge); thence northeasterly and northerly crossing Albemarle Sound along Norfolk Southern Railway Bridge; thence northerly and easterly to River Mile 13.5 on Perquimans River (Norfolk Southern Railway Bridge); thence easterly to River Mile 20.0 on Pasquotank River (Norfolk Southern Railway Bridge); and thence northerly to the North Carolina/Virginia state line near Moyock, North Carolina."

*History Note: Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1); Eff. February 1, 1976; Amended Eff. September 13, 1981.*

### 15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN

(a) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Environmental Health Section, Department of Human



Resources, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(b) No wastes shall be discharged to waters classified "SB" unless these wastes are treated to the extent necessary to assure protection of assigned water quality standards.

(c) The Director may prohibit or limit any discharge of waste into surface waters if, in the opinion of the Director, the surface waters experience or the discharge would result in:

- (1) growths of microscopic vegetation such that chlorophyll a values are greater than 40 ug/l; or
- (2) growths of microscopic or macroscopic vegetation which substantially impair the intended best usage of the waters.

(d) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is specifically adopted by reference as promulgated on October 3, 1980.

(e) In all cases where connection to an area-wide sewerage system is feasible, such connection thereto shall be required.

(f) Septic tank systems shall not be approved in high density areas. For purposes of this Regulation high density areas are defined as those areas producing more than 1,200 gallons of waste per acre per day or which contain more than three residential units per acre. For purposes of this Regulation a septic tank system is defined as a ground absorption sewage disposal system consisting of a holding or settling tank and a ground absorption field. Septic tank systems shall be designed and constructed in accordance with Environmental Management Commission regulations governing septic tank systems.

(g) Interim Treatment and Disposal Facilities. In those cases where an approved area-wide collection and treatment system is not available, and where discharge to the surface waters is prohibited in Paragraphs (a), (b), (c), (d), and where use of a septic tank system is prohibited by paragraph (f), interim treatment and disposal facilities may be approved subject to their meeting the following requirements.

- (1) Wastes other than those disposed of by spray irrigation shall receive tertiary treatment followed by adequate bactericidal treatment. For purposes of this Regulation tertiary treatment shall constitute biological treatment followed by acceptable solids removal to the extent accomplished by filtration. Also, flow equalization will be required unless it can be adequately demonstrated that either the wastewater influent flow rate will be of a uniform nature or that the proposed treatment units are designed such that they can adequately treat this wastewater without experiencing hydraulic overload.
- (2) Waste treatment facilities (except septic tank-surface sand filter systems) shall be located at least 10 feet from adjacent property under separate ownership, developed or undeveloped and at least 10 feet from on-property residential units if these units are to be sold, e.g., condominiums, residential subdivision houses. Septic tank-surface sand filter systems shall be located at least 200 feet from on-property residential units if these units are to be sold and at least 200 feet from adjacent property under separate ownership.
- (3) Waste treatment facilities shall be equipped with effective noise and odor control devices and are to be enclosed by a solid or semi-solid structure or other approved structure. An automatically activated standby power source shall be provided. All essential treatment and disposal units shall be provided in duplicate.
- (4) Treated wastes may be disposed of in on-site disposal facilities, which shall be located at least 500 feet from any impounded public surface water supply or public shallow (less than 50 feet deep) ground water supply, and at least 100 feet from a private ground water supply except when a study of the soil would indicate a lesser separation acceptable.
- (5) Waste disposal facilities shall be located at least 100 feet from any waters classified SA and at least 50 feet from any other waters. In the case of drainage ditches that are normally dry this distance may be reduced to 25 feet.
- (6) Waste disposal facilities are to be designed on the basis of site conditions and soil percolation rates. In Parts (A), (B), and (C) of this Subparagraph are given the maximum loading rates for three different treatment systems. Higher loading rates or other methods of waste disposal may be approved by the Director based upon data submitted by the applicant.
  - (A) Subsurface Disposal Trench. One and one-half gallons per day per square foot of trench bottom based on maximum trench width of three feet. Trenches shall be separated at least eight feet center to center.
  - (B) Low Pressure Distribution System. One gallon per day per square foot of effective absorption area encompassed by the distribution system. The calculation of the amount of effective absorption area required shall be based on a maximum distribution line separation of five feet center to center.

- (C) Rotary Distributors. Ten gallons per day per square foot of surface area.
- (7) Waste disposal areas are to contain at least 1,000 square feet of open "green area" for each residential unit served, or 2,500 square feet per thousand gallons per day of waste flow, whichever is less. The term "green area" contained herein is defined as an area suitable for waste disposal, either in its natural state or which has been modified by planting vegetative cover of grasses or low growing shrubbery. Green areas shall not include street or roadway right-of-ways or areas not available for waste disposal. Not more than 25 percent of the required area may be covered with non-traffic bearing paved surfaces such as walkways or patios. Subsurface disposal areas shall not be used as parking lots, driveways, or for other vehicular traffic uses.
- (8) Wastes that are to be disposed of by spray irrigation shall receive a level of treatment which will not render either the irrigation system or the disposal area unworkable. Spray irrigation systems shall be located at least 200 feet from any adjoining property, buffered by trees to prevent excessive drift. Such areas shall be surrounded by fencing with warning signs to discourage human use or trespass, and designed according to good engineering practices with the application rate not to exceed one and three fourth inches per week-unless the Director determines, based on data submitted by the applicant, that a higher application rate is justified.

*History Note:* Authority G.S. 143-211; 143-214.2(c); 143-215; 143-215.1(a);  
143-215.1(b)(1); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1986; April 1, 1983; September 13, 1981; May 11, 1980.

#### **15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS**

(a) Privately owned waste collection treatment and disposal systems serving establishments existing on the effective date of these Regulations shall comply with the requirements enumerated in these Regulations unless impossible. If adherence to the guides is not possible, the highest level of control technology consistent with site limitations shall be employed. No expansion of the load tributary to existing non-public facilities will be allowed until compliance with the guides established in these Regulations is obtained.

(b) Privately owned wastewater collection, treatment and disposal systems serving establishments not in existence on the effective date of these Regulations shall comply with the provisions of these Regulations.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);  
Eff. February 1, 1976;  
Amended Eff. September 13, 1981.

#### **15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES**

(a) Existing publicly owned waste collection, treatment, and disposal facilities shall comply with the requirements of these Regulations unless such compliance is determined by the Commission to be "not in the public interest." Such a finding would result when requirements of these Regulations could not be met even after "best available control technology economically achievable" has been provided.

(b) New publicly owned waste collection, treatment, and disposal facilities shall comply with the provisions of these Regulations, and any other applicable regulations of the Commission.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);  
Eff. February 1, 1976;  
Amended Eff. September 13, 1981.

#### **15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS**

No exception from the requirements of these Regulations shall be made until such exception is approved by the Commission.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-211; 143-215.1(a); 143-215.1(b)(1);  
Eff. February 1, 1976.

#### **15A NCAC 02H .0408 DISPOSAL OF STORMWATER**

*History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1);

*Eff. November 1, 1986;*  
*Repealed Eff. January 1, 1988.*

## **15A NCAC 02H .0409 TRIAL IMPLEMENTATION PERIOD/COASTAL STORMWATER CONTROLS**

*History Note: Authority G.S. 143-215.3(a)(1);*  
*Eff. November 1, 1986;*  
*Repealed Eff. January 1, 1988.*

### **SECTION .0500 - WATER QUALITY CERTIFICATION**

#### **15A NCAC 02H .0501 PURPOSE**

(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section shall only apply to specific activities which require state review after the effective date of this Rule and which require a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section 404(f)(1)(A)-(F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.

(b) These Rules outline the application and review procedures for activities that require water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required whenever construction or operation of facilities will result in a discharge into navigable waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR 328.3 and 40 CFR 230.3.

(c) Certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

- (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in the following Rules are required for each individual certification.
- (2) General certifications are issued for specific types or groups of activities that are similar in nature and considered to have minimal impact. The application and review procedures for requesting concurrence from the Division that the general certification can be used for the proposed activity are the same as the procedures outlined in the following Rules for individual certifications unless specifically stated otherwise in the general certification.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);*  
*RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;*  
*Eff. October 1, 1996.*

#### **15A NCAC 02H .0502 APPLICATION**

(a) Application for Certification. Any person, as defined in Article 21, Chapter 143, North Carolina General Statutes, desiring issuance of the state certification or coverage under a general certification required by Section 401 of the Federal Water Pollution Control Act as amended shall file with the Director of the North Carolina Division of Water Quality (director), at the office in Raleigh, North Carolina, an original and six copies of an application for certification. Submission of an application to the Division of Coastal Management for permits to develop in North Carolina's coastal area shall suffice as an application for certification. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
- (4) the nature of the activity to be conducted by applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;
- (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- (8) description of the type of waste treatment facilities if applicable.

- (b) Maps. There shall be attached to the application a map(s) or sketch(es) of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out its activity; the location, dimensions and type of any structures erected or to be erected on said lands for use in connection with the activity; and the location and extent of the receiving waters including wetlands within the boundaries of said lands.
- (c) Power to Request Additional Information. The Director may request, and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application.
- (d) Omissions From Applications. If the applicant considers that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information.
- (e) Investigations. The staff of the Department of Environment, Health, and Natural Resources (department) shall conduct such investigation as the Director deems necessary; and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.
- (f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.
- (g) An application form may be obtained from the Division of Water Quality, the Division of Coastal Management, or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215(c); 143B-282(1)(u);  
Eff. February 1, 1976;  
Amended Eff. December 1, 1984; January 1, 1979;  
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;  
Recodified from 15A NCAC 2H .0501 Eff. October 1, 1996;  
Amended Eff. October 1, 1996.

#### **15A NCAC 02H .0503 PUBLIC NOTICE**

- (a) Notice by Publication. Notice of each pending application for an individual certification shall be published one time in a newspaper having general circulation in the county in which the discharge will occur, or as provided in Paragraph (c) of this Rule. Publication shall be made at least 15 days prior to proposed final action by the Director upon the application and not more than 20 days after acceptance of a completed application.
- (b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director upon the application. The notice shall also state that additional information is on file with the department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the department.
- (c) The public notice requirement may also be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 7J .0206) or the U.S. Army Corps of Engineers according to their established procedures.
- (d) Notice of Hearing. If the Director determines that a hearing should be held concerning the granting or denial of the application, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.
- (e) Water Quality Certification Mailing List. Any person, may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a water quality certification mailing list and shall mail copies of notices to all persons on the list.
- (f) Payment of Costs of Public Notice. The applicant shall pay to the department the costs of advertising public notice required by Paragraphs (a) and (d) of this Rule. Certification shall be withheld until such costs have been paid.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);  
Eff. February 1, 1976;  
Amended Eff. December 1, 1984; September 1, 1984  
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;  
Recodified from 15A NCAC 2H .0502 Eff. October 1, 1996;

*Amended Eff. October 1, 1996.*

#### **15A NCAC 02H .0504 HEARING**

(a) Public Hearing on Certification. If the Director determines that it is in the public interest that a public hearing for the purpose of reviewing public comment and additional information be held prior to granting or denying certification, the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and give notice as required in Rule .0503(d) and (e) of this Section. Such hearing shall be held within 90 days following date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.

(b) Hearing for Applicant Upon Certification Denial. An applicant whose certification is denied or granted subject to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);  
Eff. February 1, 1976;  
Amended Eff. July 1, 1988; December 1, 1984;  
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;  
Recodified from 15A NCAC 2H .0503 Eff. October 1, 1996;  
Amended Eff. October 1, 1996.*

#### **15A NCAC 02H .0505 DELEGATIONS**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c);  
Eff. February 1, 1976;  
Repealed Eff. December 1, 1984.*

#### **15A NCAC 02H .0506 REVIEW OF APPLICATIONS**

(a) In evaluating requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule, the Director shall determine if the proposed activity has the potential to remove or degrade those significant existing uses which are present in the wetland or surface water. Activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2)-(5) of this Rule. Those activities covered by general certifications [15A NCAC 2H .0501(c)(2)] which do not require written concurrence from the Division shall be deemed certified if the conditions of the certification are followed and may proceed without the review procedures outlined in Paragraphs (b) through (e) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 2B .0103(c); otherwise the designated uses as outlined at 15A NCAC 2B .0231(a)(1)-(6) are assumed to exist in all classes of wetlands, and the appropriate review procedures shall be undertaken. Certification shall be issued where the Director determines water quality standards are met, including protection of existing uses.

(b) The Director shall issue a certification upon determining that existing uses are not removed or degraded by a discharge to classified surface waters for an activity which:

- (1) has no practical alternative under the criteria outlined in Paragraph (f) of this Rule;
- (2) will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;
- (3) does not result in the degradation of groundwaters or surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through mitigation as described at Subparagraphs (h)(1) of this Rule.

(c) The Director shall issue a certification upon determining that sufficient existing uses are not removed or degraded by a discharge to Class WL wetlands as defined at 15A NCAC 2B .0101(c)(8), for an activity which:

- (1) has no practical alternative as described in Paragraph (f) of this Rule, or impacts less than three acres of Class WL wetlands;
- (2) will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this

Rule; or impacts less than one acre of wetland within 150 feet (including less than 1/3 acre of wetland within 50 feet), of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United State Geological Survey 1:24,000 (7.5 minute) scale topographical map or other site specific data;

- (3) does not result in the degradation of groundwaters or surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements or as described in Subparagraph (h)(1)-(8) of this Rule.

(d) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to Class SWL wetland as defined at 15A NCAC 2B .0101(d)(4), wetlands that are contiguous to waters designated as ORW, HQW, SA, WS-I, WS-II or Trout, or wetlands that are contiguous to rivers designated as a North Carolina or National Wild and Scenic River for an activity which satisfies Subparagraphs (c)(2)-(5) of this Rule, and:

- (1) for wetlands classified as coastal wetlands pursuant to 15A NCAC 7H .0205:
  - (A) has no practical alternative as described in Paragraph (f) of this Rule; and
  - (B) is water dependent and requires access to water as a central element of its basic function, although, projects funded by government agencies may be exempted from this requirement; and
- (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1)-(7) and (9) of this Rule.

(e) The Director shall issue a certification upon determining that significant existing uses are not removed or degraded by a discharge to wetlands of exceptional state or national ecological significance including but not limited to Class UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the conservation of state or federally listed threatened or endangered species, provided that the wetlands have been so classified or designated prior to the date of application for certification or a draft environmental impact statement has been submitted to the Director, for an activity which satisfies Subparagraphs (c)(2)-(5) and (d)(1)-(2) and:

- (1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need; and
- (2) provides for replacement of existing uses through wetland mitigation under U.S. Army Corps of Engineers requirements, or as described in Subparagraphs (h)(1)-(7) and (10) of this Rule.

(f) 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 or wetlands.

(g) Minimization of impacts may be demonstrated by showing that the surface waters or wetlands are able to continue to support the existing uses after project completion, or that the impacts are required due to:

- (1) The spatial and dimensional requirements of the project; or
- (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
- (3) The purpose of the project and how the purpose relates to placement, configuration or density.

(h) Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in accordance with the following guidelines:

- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project. Mitigation required by the U.S. Army Corps of Engineers shall be considered to constitute the mitigation required by the certification unless the Director determines that the mitigation proposal does not meet the criteria established in Subparagraph (6) of this Paragraph.
- (2) Mitigation shall not be required for impacts to Class WL wetlands of less than one acre.
- (3) Participation in wetland restoration programs coordinated by the Department of Environmental, Health, and Natural Resources shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical. Mitigation sites approved by the U.S. Army Corps of Engineers shall be deemed to be consistent with the Department's restoration plan.
- (4) Acceptable methods of wetlands mitigation are listed below in the order of preference:
  - (A) Restoration: the re-establishment of wetland hydrology and vegetation in an area where it previously existed.
  - (B) Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.

- (C) Enhancement: increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
- (D) Preservation: protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
- (5) Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (6) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.
- (7) Wetlands mitigation shall be conducted based on the following ratios (acres mitigated to acres loss); 4:1, for wetlands located within 150 feet of the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; 2:1, for wetlands located between 150 feet and 1,000 feet from the mean high water line or normal water level of any perennial or intermittent water body as shown by the most recently published version of the United States Geological Survey 1:24,000 (7.5 minute) scale topographical map; and 1:1, for all other wetlands. For linear projects which impact less than 3 acres of wetlands the ratio shall be 2:1 regardless of the distance from surface waters. The above ratios apply only to restoration. The acres of required mitigation for the other types of mitigation shall be determined by multiplying the above ratios by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios. This Subparagraph shall not apply to general certifications until the Department has established a wetlands restoration program or until January 1, 1997, whichever occurs first.
- (8) Mitigation for impacts to wetlands designated in Paragraph (c) of this Rule shall be conducted within the same river basin and physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS-III shall be replaced within the water supply watershed when practical.
- (9) Mitigation for impacts to wetlands designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS-I or WS-II shall be replaced within the water supply watershed when practical.
- (10) Mitigation for impacts to wetlands designated in Paragraph (e) of this Rule shall be of the same wetland type and within the same watershed when practical.
  - (i) The Director shall not duplicate the site-specific application of any guidelines employed by the United State Army Corps of Engineers in evaluating permit applications under 33 U.S.C. 1344 and applicable federal regulations.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u); RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity; Eff. October 1, 1996.*

#### **15A NCAC 02H .0507 ISSUANCE OF CERTIFICATION**

(a) Time Limit for Final Action on Certification Application. All applications for certification shall be granted or denied within 60 days after receipt at the offices of the Director in Raleigh, North Carolina. Failure to take final action within 60 days shall result in a waiver of the certification requirement by the Director, unless:

- (1) The applicant agrees, in writing, to a longer period;
- (2) Final decision is to be made pursuant to a public hearing;
- (3) Applicant fails to furnish information necessary to the Director's decision;
- (4) Applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision or;
- (5) Information necessary to the Director's decision is unavailable.

(b) Time Limit for Final Action on Certification Application After Hearing. All applications for certification shall be granted or denied within 60 days after public hearing. Failure to take final action within 60 days shall result in a waiver of the certification requirement by the Director unless the applicant otherwise agrees in writing, or unless Subparagraph (a)(3), (4), or (5) of this Rule shall apply.

(c) Conditions of Certification. Any certification issued pursuant to this Rule may contain such conditions as the Director shall deem necessary to insure compliance with Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.

(d) Modification or Revocation of Certification

- (1) Any certification issued pursuant to this Rule shall be subject to revocation or modification for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.
- (2) Any certification issued pursuant to this Rule shall be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if conditions under which the certification was made have changed.

(e) Notification of Unapproved Application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to approve; and a copy of the notification shall be mailed to the appropriate federal licensing or permitting agency and EPA.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143B-282(1)(u);  
Eff. February 1, 1976;  
Amended Eff. July 1, 1988; December 1, 1984;  
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;  
Recodified from 15A NCAC 2H .0504 Eff. October 1, 1996;  
Amended Eff. October 1, 1996.

## **SECTION .0600 - AIR QUALITY PERMITS**

<b>15A NCAC 02H .0601</b>	<b>PURPOSE AND SCOPE</b>
<b>15A NCAC 02H .0602</b>	<b>DEFINITIONS</b>
<b>15A NCAC 02H .0603</b>	<b>APPLICATIONS</b>
<b>15A NCAC 02H .0604</b>	<b>FINAL ACTION ON PERMIT APPLICATIONS</b>
<b>15A NCAC 02H .0605</b>	<b>ISSUANCE: REVOCATION: AND ENFORCEMENT OF PERMITS</b>
<b>15A NCAC 02H .0606</b>	<b>DELEGATION OF AUTHORITY</b>

*History Note:* Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Authority G.S. 143-213; 143-215.3(a)(1), (4); 143-215.108; 143-215.109; 143-215.114;  
Eff. February 1, 1976;  
Readopted Eff. June 1, 1981;  
Amended Eff. December 1, 1993; December 1, 1992; October 1, 1991; August 1, 1991;  
Repealed Eff. July 1, 1994.

### **15A NCAC 02H .0607 COPIES OF REFERENCED DOCUMENTS**

*History Note:* Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;  
Authority G.S. 150B-21.6;  
Eff. December 1, 1976;  
Amended Eff. December 1, 1992; June 1, 1980; December 15, 1978; November 1, 1978;  
Readopted with Change Eff. June 1, 1981;  
Amended Eff. August 1, 1991; July 1, 1988; July 1, 1987; July 1, 1984;  
Repealed Eff. July 1, 1994.

### **15A NCAC 02H .0608 PERMITS FOR SOURCES IMPACTING NONATTAINMENT AREAS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);  
Eff. July 1, 1979;  
Amended Eff. June 1, 1980;  
Repealed Eff. June 1, 1981.



**15A NCAC 02H .0609 PERMIT FEES**

*History Note:* Authority G.S. 143-215.3(a)(1),(1a),(1b);  
Eff. August 1, 1988;  
Amended Eff. December 1, 1992;  
Repealed Eff. January 1, 1995.

**15A NCAC 02H .0610 PERMIT REQUIREMENTS FOR TOXIC AIR POLLUTANTS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;  
Eff. May 1, 1990;  
Amended Eff. July 1, 1996; October 1, 1993; December 1, 1992; September 1, 1992; March 1, 1992;  
Temporary Amendment Eff. July 20, 1997;  
Temporary Amendment Expired April 11, 1998;  
Repealed Eff. April 1, 1999.

**SECTION .0700 - DAM SAFETY APPROVALS**

- 15A NCAC 02H .0701 PURPOSE**
- 15A NCAC 02H .0702 DEFINITION OF TERMS**
- 15A NCAC 02H .0703 PROCEDURES FOR OBTAINING APPROVAL**
- 15A NCAC 02H .0704 APPLICATION AND SUPPLEMENTAL INFORMATION**
- 15A NCAC 02H .0705 STANDARDS FOR IMPOSITION OF CONDITIONS ON APPROVAL**
- 15A NCAC 02H .0706 STANDARDS FOR COMMENCEMENT: SUPERVISION AND COMPLETION**
- 15A NCAC 02H .0707 STANDARDS FOR REVOKING: DENYING: MODIFYING APPROVAL**
- 15A NCAC 02H .0708 DELEGATION OF AUTHORITY**

*History Note:* Authority G.S. 143-215.3(a)(4); 143-215.26 through 143-215.30;  
143-215.34;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1978; September 10, 1976;  
Repealed Eff. June 15, 1980.

**SECTION .0800 – LABORATORY CERTIFICATION**

**15A NCAC 02H .0801 PURPOSE**

The purpose of these Rules is to set out certification criteria for laboratory facilities performing any tests, analyses, measurements, or monitoring required under G.S. 143 Article 21 or any rules adopted thereunder, and to establish fees for certification program support.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. August 1, 2002.

**15A NCAC 02H .0802 SCOPE**

These Rules apply to laboratory facilities which perform and report analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500 (Only facilities classified in accordance with Classification of Water Pollution Control Systems Rules found in 15A NCAC 08G .0300 are subject to these Rules.); Groundwater Rules found in 15A NCAC 02L .0100, .0200, and .0300; Waste Not Discharged to Surface Waters Rules found in 15A NCAC 02H .0200; Point Source Discharges to the Surface Waters Rules found in 15A NCAC 02H .0100. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as regulated in 15A NCAC 02H .0900. Laboratory

facilities performing and reporting analyses for field parameters only, shall be considered for certification as specified in Rule .0805(g) of this Section.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. August 1, 2002.

### **15A NCAC 02H .0803 DEFINITIONS**

The following terms as used in this Section shall have the assigned meaning:

- (1) "Analytical chemistry experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.
- (2) "Certification" means a declaration by the state that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable pursuant to these Rules.
- (3) "Certified Data" shall be defined as any analytical result, including the supporting documentation, obtained through the use of a method or procedure which has been deemed acceptable by the State of North Carolina for Laboratory Certification purposes pursuant to these Rules.
- (4) "Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples, including Field Parameters, for others for a fee.
- (5) "Decertification" means loss of certification.
- (6) "Falsified data or information" means data or information which has been made untrue by alteration, fabrication, omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.
- (7) "Field Parameters", for the purpose of these Rules shall include Total Residual Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, and Temperature.
- (8) "Inaccurate data or other information" means data or information that is in any way incorrect, or mistaken.
- (9) "Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).
- (10) "Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples, including Field Parameters, from its wastewater or wastewater from its water treatment plant(s).
- (11) "Other" laboratory means a facility that does not require laboratory certification as part of its routine operation and does not analyze samples for a fee, or is doing business as a non-profit facility.
- (12) "Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900 and approved by the Division of Water Quality.
- (13) "State" means the North Carolina Department of Environment and Natural Resources, or its successor.
- (14) "State Laboratory" means the Laboratory Section of the North Carolina Division of Water Quality, or its successor.
- (15) "Unacceptable results" means those results on performance evaluation samples that exceed the specified acceptable range as indicated by a US EPA accredited vendor.
- (16) "Uncertified data" shall be defined as any analytical result, including the supporting documentation, obtained using a method or procedure which is not acceptable to the State Laboratory pursuant to these Rules.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992; December 1, 1984; November 1, 1978;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. August 1, 2002.

### **15A NCAC 02H .0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED**

(a) Commercial laboratories are required to obtain certification for parameters which will be reported by the client to comply with State surface water monitoring, groundwater, and pretreatment Rules. Municipal and Industrial Laboratories are required to obtain certification for parameters which will be reported to the State to comply with State surface water monitoring, groundwater, and pretreatment Rules. Commercial, Municipal, Industrial and Other facilities are required to obtain certification for field parameters which will be reported by the client to comply with State surface water, groundwater, and pretreatment Rules.

(b) A listing of certifiable inorganic parameters follows:

- (1) Alkalinity
- (2) Aquatic Humic Substances
- (3) BOD
- (4) COD
- (5) Chloride
- (6) Chlorine, Total Residual
- (7) Chlorophyll
- (8) Coliform, Fecal
- (9) Coliform, Total
- (10) Color
- (11) Conductivity
- (12) Cyanide
- (13) Dissolved Oxygen
- (14) Fluoride
- (15) Hardness, Total
- (16) MBAS
- (17) Ammonia Nitrogen
- (18) Total Kjeldahl Nitrogen (TKN)
- (19) Nitrate plus Nitrite Nitrogen
- (20) Nitrate Nitrogen
- (21) Nitrite Nitrogen
- (22) Total Phosphorus
- (23) Orthophosphate
- (24) Oil and Grease
- (25) pH
- (26) Phenols
- (27) Residue, Settleable
- (28) Residue, Total
- (29) Residue, Total Dissolved 180°C
- (30) Residue, Total Suspended
- (31) Salmonella
- (32) Sulfate
- (33) Sulfide
- (34) Sulfite
- (35) Temperature
- (36) Total Organic Carbon (TOC)
- (37) Turbidity
- (38) Leachate Procedures
- (39) Vector Attraction Reduction - All Options

(c) Metals: Each of the following will be considered a certifiable Metals analyte:

- (1) Aluminum
- (2) Antimony
- (3) Arsenic
- (4) Barium
- (5) Beryllium
- (6) Cadmium
- (7) Calcium
- (8) Chromium, Total

- (9) Chromium, Hexavalent
- (10) Cobalt
- (11) Copper
- (12) Iron
- (13) Lead
- (14) Magnesium
- (15) Manganese
- (16) Mercury
- (17) Molybdenum
- (18) Nickel
- (19) Selenium
- (20) Silver
- (21) Thallium
- (22) Tin
- (23) Vanadium
- (24) Zinc

(d) Each of the analytical categories listed in this Paragraph shall be considered a certifiable parameter. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. A listing of certifiable organic parameters follows:

- (1) Purgeable Halocarbons
- (2) Purgeable Aromatics
- (3) Acrolein, Acrylonitrile, Acetonitrile
- (4) Phenols
- (5) Benzidines
- (6) Phthalate Esters
- (7) Nitrosamines
- (8) Organochlorine Pesticides
- (9) Polychlorinated Biphenyls
- (10) Nitroaromatics and Isophorone
- (11) Polynuclear Aromatic Hydrocarbons
- (12) Haloethers
- (13) Chlorinated Hydrocarbons
- (14) Purgeable Organics
- (15) Base/Neutral and Acid Organics
- (16) Chlorinated Acid Herbicides
- (17) Organophosphorus Pesticides
- (18) Total Petroleum Hydrocarbons - (TPH) California GC Method - Diesel Range Organics
- (19) Total Petroleum Hydrocarbons - (TPH) California GC Method - Gasoline Range Organics
- (20) Nonhalogenated Volatile Organics
- (21) N-Methylcarbamates
- (22) 1,2, Dibromoethane (EDB)
- (23) Extractable Petroleum Hydrocarbons
- (24) Volatile Petroleum Hydrocarbons
- (25) Chlorinated Phenolics
- (26) Adsorbable Organic Halides

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992; December 1, 1984;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. August 1, 2002.

(a) Prerequisites and requirements for Certification. The following requirements must be met prior to certification. Once certified, failure to comply with any of the following items will be a violation of certification requirements. All "Field Parameter" only facility requirements are located in Paragraph (g) of this Rule.

- (1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR-136.3; Standard Methods for the Examination of Water and Wastewater, 18th Edition; or Test Methods for Evaluating Solid Waste, SW 846, Third Edition. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained for a cost of forty-two dollars (\$42.00), from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, DC, 20402. The publication number is 869-042-00148-6. Standard Methods for the Examination of Water and Waste, is available for purchase from the American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235. The costs are as follows: 18th Edition -one hundred sixty dollars (\$160.00), 19th Edition - one hundred eighty dollars (\$180.00), 20th Edition - two hundred dollars (\$200.00). Copies of Test Methods for Evaluating Solid Waste, SW 846, Third Edition may be purchased for a cost of three hundred sixty seven dollars (\$367.00) from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. Vector Attraction Reduction Options shall be Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013, Chapter 8. The document is available from US EPA; Office of Research and Development, Washington, NC 20460 at no cost. The method for Total Petroleum Hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and others, 1985, Guidelines for Addressing Fuel Leaks: California Regional Quality Control Board San Francisco Bay Region. The method for Total Petroleum Hydrocarbons is available from the State Laboratory at no cost. The methods for Volatile Petroleum Hydrocarbons and Extractable Petroleum Hydrocarbons shall be Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH) and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH); January, 1998. The Director may approve other analytical procedures that have been demonstrated to produce verifiable and repeatable results and that have a widespread acceptance in the scientific community.
- (2) Performance Evaluations. Annually, each certified laboratory must demonstrate acceptable performance on evaluation samples as required by these Rules.
  - (A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA/DMR/QA) Study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate.
  - (B) Commercial laboratories must participate annually in water pollution studies by analyzing performance evaluation samples obtained from an accredited vendor as unknowns, and reporting data produced to the State. The laboratory is responsible for submitting acceptable results for all parameters listed on their certificate. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both samples will be considered the first unacceptable result for certification purposes and a rerun sample must be submitted.
  - (C) Laboratories requesting initial certification must submit an acceptable performance sample result for each parameter for which performance samples are available. Laboratories that submit two unacceptable results for a particular parameter must then submit two consecutive acceptable results for that parameter prior to initial certification.
  - (D) If performance samples are not available for a parameter, certification for that parameter will be based on the proper use of the approved procedure, the on-site inspection, and adherence to the other requirements in this Section. Analysis of split samples may also be required.
- (3) Supervisory Requirements.
  - (A) The supervisor of a commercial laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of two years laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of four years experience in analytical chemistry.

- (B) The supervisor of a municipal or industrial waste water treatment plant laboratory must have a minimum of a B.S. or A.B. degree in chemistry or closely related science curriculum from an accredited college or university plus a minimum of six months laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of two years experience in analytical chemistry. Non-degree supervisors must have at least six years laboratory experience in analytical chemistry.
  - (C) All laboratory supervisors are subject to review by the State Laboratory. One person may serve as supervisor of no more than two laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analyses made for these Rules. The supervisor must work in the laboratory or visit the laboratory once each day of normal operations. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor cannot be in charge for more than six consecutive weeks. Existing laboratory supervisors that do not meet the requirements of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements. Previous laboratory-related performance will be considered when reviewing the qualifications of a potential laboratory supervisor.
- (4) Laboratory Manager. Each laboratory must designate a laboratory manager and include his name and title on the application for certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with a replacement qualified pursuant to these Rules. At commercial laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.
- (5) Application. Each laboratory requesting initial state certification shall submit an application in duplicate, accompanied by the application fee and the laboratory's Quality Assurance Manual to the State Laboratory. Separate application and certification shall be required for all laboratories maintained on separate premises even though operated under the same management; however, separate certification is not required for separate buildings on the same or adjoining grounds. After receiving a completed application and prior to issuing certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (6) Facilities and equipment. Each laboratory requesting certification must contain or be equipped with the following:
- (A) A minimum of 150 sq. ft. of laboratory space;
  - (B) A minimum of 12 linear feet of laboratory bench space;
  - (C) A sink with hot and cold water;
  - (D) An analytical balance capable of weighing 0.1 mg, mounted on a shock proof table;
  - (E) A refrigerator of adequate size to store all samples and maintain temperature of four degrees Celsius;
  - (F) A copy of each approved analytical procedure being used in the laboratory;
  - (G) A source of distilled or deionized water that will meet the minimum criteria of the approved methodologies;
  - (H) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.
- (7) Analytical Quality Control Program. Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control document shall be available for inspection by the State Laboratory. The following are requirements for certification and must be included in each certified laboratory's quality control program:
- (A) All analytical data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.
  - (B) Excluding Oil and Grease, all residue parameters, leachate extractions, residual chlorine, and coliform, analyze one known standard in addition to calibration standards each day samples are analyzed to document accuracy. Analyze one suspended residue, one dissolved residue, one

residual chlorine and one oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.

- (C) Except for Oil and Grease (EPA Method 413.1), settleable solids or where otherwise specified in an analytical method, analyze five percent of all samples in duplicate to document precision. Laboratories analyzing less than 20 samples per month must analyze at least one duplicate each month samples are analyzed.
  - (D) Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.
  - (E) All quality control requirements in these Rules as set forth by the State Laboratory.
  - (F) Any time quality control results indicate an analytical problem, the problem must be resolved and any samples involved must be rerun if the holding time has not expired.
  - (G) All analytical records must be available for a period of five years. Records, which are stored only on electronic media, must be maintained and supported in the laboratory by all hardware and software necessary for immediate data retrieval and review.
  - (H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.
  - (I) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards must bracket the concentration of the samples analyzed. One of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along with each group of samples. For colorimetric analyses, a series of five standards for a curve prepared annually or three standards for curves established each day or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid-range, each time a new stock standard is prepared, or at least every twelve months. Each analyst performing the analytical procedure must produce a standard curve.
  - (J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.
  - (K) The analytical balance must be checked with one class S, or equivalent, standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.
  - (L) Chemicals must be dated when received and when opened. Reagents must be dated and initialed when prepared.
  - (M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained. Each sample must clearly indicate the State of North Carolina collection site on all record transcriptions.
  - (N) At any time a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating corrective actions taken to prevent the problem for future samples.
  - (O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or be checked, at a minimum annually, against a NIST traceable thermometer and proper corrections made.
- (8) Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807(e) of this Section.

(b) Issuance of Certification.

- (1) Upon compliance with these Rules, certification shall be issued by the Director, Division of Water Quality, Department of Environment and Natural Resources or his delegate, for each of the applicable parameters requested within 30 days.
  - (2) Initial certifications shall be issued for prorated time periods to schedule all certification renewals on the first day of January and shall be valid for one year.
- (c) Maintenance of Certification.
- (1) To maintain certification for each parameter, a certified laboratory must analyze up to four performance evaluation samples per parameter per year submitted by an accredited vendor as an unknown. Laboratories submitting unacceptable results on a performance evaluation sample may be required to analyze more than four samples per year.
  - (2) In addition, the State Laboratory may request that samples be split into two equal representative portions, one part going to the State and the other to the certified laboratory for analysis.
  - (3) The State laboratory may submit or require clients to submit blind performance samples or split samples under direction of State Laboratory personnel.
  - (4) A certified laboratory shall be subject to periodic announced or unannounced inspections during the certification period and shall make time and records available for inspections and must supply copies of records for any investigation upon written request by the State Laboratory.
  - (5) A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.
  - (6) A certified laboratory must submit written notice of any changes of location, ownership, address, name or telephone number within 30 days of such changes.
  - (7) A certified laboratory must submit a written amendment to the certification application each time that changes occur in methodology, reporting limits, and major equipment. The amendment must be received within 30 days of such changes.
- (d) Certification Renewals
- (1) Certification renewals of laboratories shall be issued for one year.
- (e) Data reporting.
- (1) Certified commercial laboratories must make data reports to their clients that are signed by the laboratory supervisor. This duty may be delegated in writing; however, the responsibility shall remain with the supervisor.
  - (2) Whenever a certified commercial laboratory refers or subcontracts samples to another certified laboratory for analyses, the referring laboratory must supply the date and time samples were collected to insure holding times are met. Subcontracted samples must clearly indicate the State of North Carolina as the collection site on all record transcriptions. Laboratories may subcontract sample fractions, extracts, leachates and other sample preparation products provided that all Rules and requirements of 15A NCAC 02H .0800 are documented. The initial client requesting the analyses must receive the original or a copy of the report made by the laboratory that performs the analyses.
  - (3) All uncertified data must be clearly documented as such on the benchsheet and on the final report.
- (f) Discontinuation of Certification.
- (1) A laboratory may discontinue certification for any or all parameters by making a written request to the State Laboratory.
  - (2) After discontinuation of certification, a laboratory may be recertified by meeting the requirements for initial certification; however, laboratories that discontinue certification during any investigation shall be subject to Rule .0808 of this Section.
- (g) Prerequisites and requirements for Field Parameter Certification. Only the following requirements must be met prior to certification for Field Parameter Laboratories. Once certified, failure to comply with any of the following items will be a violation of certification requirements.
- (1) Data pertinent to each analysis must be maintained for five years. Certified Data must consist of date collected, time collected, sample site, sample collector, and sample analysis time. The field benchsheets must provide a space for the signature or initials of the analyst, and proper units of measure for all analyses.
  - (2) A record of instrument calibration where applicable, must be filed in an orderly manner so as to be readily available for inspection upon request.
  - (3) A copy of each approved analytical procedure must be available to each analyst.
  - (4) Each facility must have glassware, chemicals, supplies, equipment, and a source of distilled or deionized water that will meet the minimum criteria of the approved methodologies.



- (5) Supervisors of laboratories certified for Field Parameters only must meet the requirements of Subparagraph (a)(3)(A) or (a)(3)(B) of this Section, or possess a chemistry or related degree with two years of related environmental experience, or hold any Biological Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G.
- (6) Application: Each Field Parameter Laboratory shall submit an application in duplicate.
- (7) Performance Evaluations. Each Field Parameter Laboratory must participate in an annual quality assurance study by analyzing performance evaluation samples obtained from an accredited vendor as unknowns. If performance evaluations are not available for a parameter, certification for that parameter may be based on the proper use of the approved procedure as determined by an announced or unannounced on-site inspection.
- (8) Decertification and Civil Penalties. A laboratory facility can be decertified for infractions as outlined in Rule .0807 of this Section.
- (9) Recertification. A laboratory facility can be recertified in accordance with Rule .0808 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
 Eff. February 1, 1976;  
 Amended Eff. July 1, 1988; July 1, 1985; December 1, 1984; November 1, 1978;  
 RRC Objection Eff. October 15, 1992 due to lack of statutory authority;  
 Amended Eff. December 21, 1992;  
 RRC Objection Removed Eff. December 16, 1993;  
 Temporary Amendment Eff. October 1, 2001;  
 Amended Eff. August 1, 2002.*

#### **15A NCAC 02H .0806 FEES ASSOCIATED WITH CERTIFICATION PROGRAM**

- (a) An applicant for laboratory certification, excluding those laboratories seeking Field Parameter Certification only, must submit to the Department of Environment and Natural Resources, Laboratory Section, a non-refundable fee of three hundred dollars (\$300.00) for the evaluation and processing of each application.
- (b) Municipal, Industrial and Other laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte; however, the minimum fee will be one thousand three hundred fifty dollars (\$1,350.00) per year.
- (c) Commercial laboratories must pay an annual fee of fifty dollars (\$50.00) for each inorganic parameter plus one hundred dollars (\$100.00) for each organic parameter and metals analyte; however, the minimum fee will be two thousand seven hundred dollars (\$2,700.00) per year.
- (d) Prior to receiving initial certification, a laboratory must pay the required fee as specified in Paragraph (b) or (c) of this Rule. Initial certification fee will be prorated on a semi-annual basis to make all certification renewals due on the first day of January.
- (e) Once certified, a laboratory must pay the full annual parameter fee for each parameter added to their certificate.
- (f) A laboratory decertified for all parameters must pay initial certification fees prior to recertification.
- (g) A laboratory decertified for one or more parameters must pay a fee of two hundred dollars (\$200.00) for each parameter for which it was decertified prior to recertification.
- (h) Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification and maintenance of certification.
- (i) Annual certification fees are due 60 days after receipt of invoice.
- (j) A two hundred fifty dollar (\$250.00) late payment fee must be paid when annual certification fees are not paid by the date due.
- (k) Commercial facilities analyzing samples for field parameters only must pay an annual fee of two hundred dollars (\$200.00) per year.
- (l) Municipal and Industrial facilities analyzing samples for field parameters only must pay an annual fee of one hundred dollars (\$100.00) per year.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
 Eff. February 1, 1976;  
 Amended Eff. November 2, 1992; December 1, 1984;  
 Temporary Amendment Eff. October 1, 2001;  
 Amended Eff. August 1, 2002.*

## **15A NCAC 02H .0807 DECERTIFICATION AND CIVIL PENALTIES**

(a) Laboratory Decertification. A laboratory may be decertified, for any or all parameters, for up to one year for any of the following infractions:

- (1) Failing to maintain the facilities, or records, or personnel, or equipment, or quality control program as set forth in the application, and these Rules; or
- (2) Submitting inaccurate data or other information; or
- (3) Failing to pay required fees by the date due; or
- (4) Failing to discontinue supplying data for clients or programs described in Rule .0802 of this Section during periods when a decertification is in effect; or
- (5) Failing to submit a split sample to the State Laboratory as requested; or
- (6) Failing to use approved methods of analysis; or
- (7) Failing to report laboratory supervisor or equipment changes within 30 days of such changes; or
- (8) Failing to report analysis of required annual performance evaluation samples submitted by an EPA approved vendor within the specified time limit; or
- (9) Failing to allow an inspection by an authorized representative of the State Laboratory; or
- (10) Failing to supply analytical data requested by the State Laboratory; or
- (11) Failing to submit a written amendment to the certification application within 30 days of applicable changes; or
- (12) Failing to meet required sample holding times; or
- (13) Failing to respond to requests for information by the date due; or
- (14) Failing to comply with any other terms, conditions, or requirements of this Section or of a laboratory certification.

(b) Parameter Decertification. A laboratory may receive a parameter decertification for failing to:

- (1) Obtain acceptable results on two consecutive blind or announced performance evaluation samples submitted by an EPA accredited vendor or the State Laboratory; or
- (2) Obtain acceptable results on two consecutive blind or announced split samples that have also been analyzed by the State Laboratory.

(c) Falsified Data. A laboratory that submits falsified data or other information may be decertified for all parameters for up to two years.

(d) Decertification Factors. In determining a period of decertification, the Director shall recognize that any harm to the natural resources of the State arising from violations of these Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Decertification for periods up to the maximum may be based on any and or a combination of the following factors to be considered:

- (1) The degree and extent of harm, or potential harm, to the natural resources of the State or to the public health, or to private property resulting from the violation;
- (2) The duration, and gravity of the violation;
- (3) The effect, or potential effect, on ground or surface water quantity or quality or on air quality;
- (4) Cost of rectifying any damage;
- (5) The amount of money saved by noncompliance;
- (6) As to violations other than submission of falsified data or other information, whether the violation was committed willfully or intentionally;
- (7) The prior record of the laboratory in complying or failing to comply with any State and Federal laboratory Rules and regulations;
- (8) The cost to the State of investigation and enforcement procedures;
- (9) Cooperation of the laboratory in discovering, identifying, or reporting the violation;
- (10) Measures the laboratory implemented to correct the violation or abate the effect of the violation, including notifying any affected clients;
- (11) Measures the laboratory implemented to correct the cause of the violation;
- (12) Any other relevant facts.

(e) Decertification Requirements.

- (1) A decertified laboratory is not to analyze samples for the decertified parameters for programs described in Rule .0802 of this Section or clients reporting to these programs.

- (2) A decertified commercial laboratory must supply written notification of the decertification to clients with Division of Water Quality reporting requirements. Within 30 days, the decertified laboratory must supply the State Laboratory with a list of clients involved and copies of the notices sent to each.
- (3) A commercial laboratory that has received a parameter decertification may make arrangements to supply analysis through another certified laboratory during any decertification periods. The decertified laboratory must supply the State Laboratory, by written notice, the name of the laboratory to be used.
- (4) A commercial laboratory decertified for all parameters cannot subcontract samples for analyses to other certified laboratories during the decertification period.
- (5) A decertified municipal or industrial laboratory must have its samples analyzed by another certified laboratory during any decertification period and supply the State Laboratory, by written notice, the name of the certified laboratory to be used.

(f) Civil Penalties. Civil penalties may be assessed against a laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rules in this Section or of a laboratory certification. A laboratory is subject to both civil penalties and decertification.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; Temporary Amendment Eff. October 1, 2001; Amended Eff. August 1, 2002.*

#### **15A NCAC 02H .0808 RECERTIFICATION**

- (a) A laboratory decertified in accordance with Paragraph (a) of Rule .0807 of this Section may be recertified at the end of the decertification period by showing to the satisfaction of the State Laboratory that it has corrected the deficiency(ies).
- (b) A laboratory decertified for a parameter due to unacceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor, or on two consecutive split samples may be recertified after 60 days by reporting acceptable results on two consecutive performance evaluation samples submitted by an EPA accredited vendor. Recertification samples may be requested from an EPA accredited vendor at any time, however, recertification must be requested in writing at the end of the 60 day period immediately following the date of decertification.
- (c) A laboratory decertified for submitting falsified data or other information may be recertified at the end of the decertification period by demonstrating compliance with all requirements of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984; Temporary Amendment Eff. October 1, 2001; Amended Eff. August 1, 2002.*

#### **15A NCAC 02H .0809 RECIPROCITY**

- (a) Laboratories certified under other state certification programs may be given reciprocity certification where such programs meet the requirements of this Section. In requesting reciprocity certification, laboratories shall include with the application required by Rule .0805(a) of this Section a copy of their certification and Regulation from the certifying agency.
- (b) Laboratories certified by reciprocity shall pay the fees required by Rule .0806 of this Section.
- (c) Any time that a laboratory has its certification with the reciprocal program discontinued for any reason, certification under this Section shall be terminated at the same time.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); Eff. February 1, 1976; Amended Eff. November 2, 1992; December 1, 1984.*

#### **15A NCAC 02H .0810 ADMINISTRATION**

- (a) The Director of the Division of Water Quality, Department of Environment and Natural Resources, or his delegate, is authorized to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

(b) Appeals. In any case where the Director of the Division of Water Quality, Department of Environment and Natural Resources or his delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with Chapter 150B of the General Statutes.

(c) The State Laboratory will maintain a current list of certified commercial laboratories.

(d) Implementation of the October 1, 2001 changes to this Section.

- (1) All requirements of the Rules in this Section are effective on the effective date of the amendments.
- (2) Requests for the new parameters may be made by submitting a properly completed amendment form.
- (3) Laboratories subject to the amended requirements of these Rules must submit a completed application, or amendment form, within three months of the effective date of the amendments. Laboratories submitting an application or amendment form for any of the newly certifiable parameters may analyze samples for these new parameters until the State Laboratory has issued or denied certification. Fees for parameter additions requested during the initial three month period will be calculated as initial certification fees.
- (4) Laboratory facilities, not currently certified, that are performing analyses for Field Parameters only must submit an application within three months of the effective date of the amendments. After submitting an application, these laboratories may continue to analyze samples until the State Laboratory has issued or denied certification.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 150B-23;  
Eff. February 1, 1976;  
Amended Eff. November 2, 1992; July 1, 1988; December 1, 1984; November 1, 1978;  
Temporary Amendment Eff. October 1, 2001;  
Amended Eff. August 1, 2002.

#### **15A NCAC 02H .0811 IMPLEMENTATION**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10);  
Eff. December 1, 1984;  
Repealed Eff. July 1, 1988.

### **SECTION .0900 - LOCAL PRETREATMENT PROGRAMS**

#### **15A NCAC 02H .0901 PURPOSE**

(a) The rules in this Section are designed to implement North Carolina General Statutes 143-215.3(a)(14) and 143-215.1 and provisions of the Federal Water Pollution Control Act (also known as the "Clean Water Act") regarding the discharge of non-domestic wastewater into publicly owned treatment works (POTWs). They establish responsibilities of state and local government, industry, and the public to implement pretreatment standards to control pollutants which pass through or interfere with treatment processes in POTWs, which may contaminate sewage sludge, or which otherwise have an adverse impact on the POTW, its workers, or the environment.

(b) Copies of rules referenced in this Section may be obtained from the Division of Water Quality, Surface Water Protection Section at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/swp/ps/pret/>;
- (2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality  
Offices of the Pretreatment, Emergency Response, and Collection Systems (PERCS) Unit  
Physical Address: Archdale Building, 512 N. Salisbury St.,  
Raleigh, N.C. 27604  
Mailing Address: 1617 Mail Service Center  
Raleigh, N.C. 27699-1617;
- (3) Raleigh Regional Office  
3800 Barrett Dr.  
Raleigh, N.C. 27609;
- (4) Asheville Regional Office  
2090 US Highway 70  
Swannanoa, NC 28778;
- (5) Mooresville Regional Office  
610 East Center Avenue, Suite 301

- (6) Mooresville, N.C. 28115;  
Fayetteville Regional Office  
Systel Bldg; Suite 714  
225 Green Street  
Fayetteville, N.C. 28301;
- (7) Washington Regional Office  
1424 Carolina Avenue,  
Washington, N.C. 27889;
- (8) Wilmington Regional Office  
127 Cardinal Drive Extension,  
Wilmington, N.C. 28405-3845; and
- (9) Winston-Salem Regional Office  
585 Waughtown Street  
Winston-Salem, N.C. 27107.

*History Note:* Authority G.S. 143-215.3(a)(14);  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0902 SCOPE**

These Rules apply to:

- (1) Pollutants from non-domestic sources covered by pretreatment standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in 40 CFR 403.3 and Rule .0903 of this Section;
- (2) POTWs and control authorities which receive wastewater from sources subject to pretreatment standards; and
- (3) Any new or existing source subject to pretreatment standards. Pretreatment standards do not apply to sources which discharge to a sewer which is not connected to a POTW treatment plant.

*History Note:* Authority G.S. 143-215.3(a)(14);  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987.

#### **15A NCAC 02H .0903 DEFINITION OF TERMS**

(a) Unless otherwise defined in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.3 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

(b) For this Rule the following definitions in addition to those incorporated by reference in Paragraph (a) of this Rule shall apply:

- (1) "Approval Authority" means the Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources, or his/her designee;
- (2) "Average" means the value calculated by dividing the sum of the data values collected over a time period by the number of data points which comprise the sum;
- (3) "Bypass" is the intentional diversion of waste streams from any portion of a pretreatment facility. Also see Rule .0919 of this Section and 40 CFR Part 403.17 for additional requirements;
- (4) "Commission" means the Environmental Management Commission of the North Carolina Department of Environment and Natural Resources or its successor;
- (5) "Control Authority" refers to the POTW organization if the POTW organization's pretreatment program has been approved in accordance with Rules .0905, .0906, and .0907 of this Section, and that approval has not been subsequently withdrawn. Otherwise, the approval authority is the control authority;
- (6) "Division" refers to the North Carolina Department of Environment and Natural Resources, Division of Water Quality;

- (7) "Enforcement Response Plan" or "ERP" means the control authority pretreatment program document describing the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements;
- (8) "EPA" means the United States Environmental Protection Agency;
- (9) "Fundamentally Different Factors" are factors upon which a variance from a categorical standard may be granted under Rule .0912 of this Section and 40 CFR Part 403.13;
- (10) "Headworks Analysis" or "HWA" is the analysis used to calculate the maximum allowable POTW influent loadings for flow and pollutants of concern based on design capacity, NPDES or non-discharge permit limits, pass through, interference, sludge, or worker safety and health considerations, as applicable. The headworks analysis is the technical basis for deriving local limits applied to industrial users;
- (11) "Indirect Discharge" or "Discharge" refers to the introduction of pollutants into a POTW from any non-domestic source regulated under Sections 307(b), (c), or (d) of the Clean Water Act;
- (12) "Industrial User" or "User" means a source of indirect discharge;
- (13) "Industrial Waste Survey" refers to the survey of the users of the POTW collection system or treatment plant performed by the control authority as required by 40 CFR Part 403.8 (f)(2)(i-iii) and Rule .0905 of this Section, including identification of all industrial users and the character and amount of pollutants contributed to the POTW by these industrial users and identification of those industrial users meeting the definition of significant industrial user. Where the control authority accepts wastewater from one or more satellite POTWs, the IWS for that control authority shall address all satellite POTW service areas, unless the pretreatment program in those satellite service areas is administered by a separate control authority;
- (14) "Interference" refers to inhibition or disruption of the POTW collection system; treatment processes; operations; or its sludge process, use, or disposal which causes or contributes to a violation of any requirement of the control authority's (or the POTW's if different from the control authority) NPDES, collection system, or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits;
- (15) "Medical Waste" refers to isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes;
- (16) "Monitoring Plan" refers to the monitoring plan designed to collect POTW site-specific data for use in the Headworks Analysis. Monitoring Plans may be designated as "Long Term" or "Short Term," LTMP and STMP, respectively, as the Division Director determines to be necessary;
- (17) "National Categorical Pretreatment Standard" or "Categorical Standard" refers to any regulation containing pollutant discharge limits promulgated by EPA in accordance with Sections 307(b) and (c) of the Clean Water Act which applies to a specific category of industrial users, and which appears in 40 CFR Parts 405-471;
- (18) "National Prohibited Discharge Standard" is an absolute prohibition against the discharge of certain substances to the POTW, including both general and specific prohibitions;
- (19) "Net/Gross Calculation" is an adjustment of a categorical standard to reflect the presence of pollutants in the industrial user's intake water that may be granted under Rule .0915 of this Section and 40 CFR Part 403.15;
- (20) "Noncontact Cooling Water" is water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product;
- (21) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State;
- (22) "Operator in Responsible Charge" is the operator designated to fulfill the requirements of G.S. 90A-44;
- (23) "Pass Through" means a discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the control authority's (or the POTW's, if different from the control authority) NPDES, collection system, or non-discharge permit;
- (24) "Pollutant" includes any waste defined in G.S. 143-213(18); dredged spoil; solid waste; incinerator residue; garbage; sewage sludge; munitions; medical wastes; chemical waste; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; municipal and agricultural waste; and certain characteristics of wastewater, such as pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor;

- (25) "Pollutant of Concern" or "POC" is a pollutant identified as being of concern to the control authority for purposes of the pretreatment program; a pollutant of concern may include but not be limited to conventional wastewater pollutant, such as BOD, TSS, or ammonia; any of the priority pollutants; pH; and any pollutant that may be identified as a source of interference, pass through, whole effluent toxicity, or sludge contamination;
- (26) "POTW", or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act (CWA), which is owned by a state or local government organization. This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes the collection system, only if it conveys wastewater to a POTW treatment plant. Also see 15A NCAC 02T .0402. The term also means the local government organization, or municipality, as defined in Section 502(4) of the CWA, which has jurisdiction over indirect discharges to and the discharges from such a treatment works. In this context, the organization may be the owner of the POTW treatment plant or the owner of the collection system into which an indirect discharger discharges. This second type of POTW may be referred to as a "satellite POTW organization." For clarity, the local government may be referred to as the "POTW organization" or "Control Authority" as applicable in this Rule and all other rules in this Section. See also Subparagraph (b)(5) of this Rule and Rule .0908(h) of this Section;
- (27) "POTW Director" means the chief administrative officer of the control authority or his/her delegate;
- (28) "Pretreatment" refers to the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW collection system or treatment plant. The reduction or alteration may be obtained by physical, chemical, or biological processes, or process changes or other means, except as prohibited by 40 CFR Part 403.6(d);
- (29) "Pretreatment Standard" is any prohibited discharge standard, categorical standard, or local limit which applies to an industrial user;
- (30) "Process Wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product;
- (31) "Removal Credits" are credits that may be granted under Rule .0921 of this Section and 40 CFR Parts 403.7 and 403.11 to adjust categorical standards in such a way as to reflect POTW consistent removal of a particular pollutant;
- (32) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;
- (33) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a publicly owned treatment works and that:
- (A) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters);
  - (B) Contributes process wastewater which makes up five percent or more of the NPDES or non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS and ammonia;
  - (C) Is subject to categorical standards under 40 CFR Part 403.6 and 40 CFR Parts 405-471;
  - (D) is designated as such by the control authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, or the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options;
  - (E) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Parts (A) or (B) of this Subparagraph has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or to limit the POTW's sludge disposal options, and thus is not a significant industrial user; or
  - (F) Subject to approval under Rule .0907(b) of this Section, the control authority may determine that an industrial user meeting the criteria in Part (C) of this Subparagraph meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a non-significant categorical industrial user;

- (34) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met:
- (A) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
  - (B) "Technical Review Criteria" (TRC) violations, defined here as those in which 33 percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH));
  - (C) Any other violation of a pretreatment standard or requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority (or POTW, if different from the control authority), determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
  - (D) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the control authority's or the POTW's, if different from the control authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) to halt or prevent such a discharge;
  - (E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a pretreatment permit or enforcement order for starting construction, completing construction, or attaining final compliance;
  - (F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, self-monitoring reports, and reports on compliance with compliance schedules;
  - (G) Failure to accurately report noncompliance; or
  - (H) Any other violation or group of violations that the control authority or POTW determines will adversely affect the operation or implementation of the local pretreatment program;
- Additionally, effective January 1, 2012, any industrial user which meets the criteria in Parts (C), (D), or (H) of this Subparagraph shall also be in SNC;
- (35) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources;
- (36) "Upset" means the same as set out in Rule .0914 of this Section and 40 CFR Part 403.16;
- (37) "Waste reduction" means source reduction and recycling;
- (38) "Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW; and
- (39) "Waters of the State" are all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained in, flow through, or border upon the State or any portion thereof.

*History Note: Authority G.S. 130A-334(13); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; Eff. March 28, 1980; Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.*

#### **15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS**

(a) The regulations regarding pretreatment program development by the control authority promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(a) through 403.8(e) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

(b) The Division may allow a control authority having a combined permitted flow less than or equal to two million gallons per day and less than four significant industrial users to develop and implement a modified pretreatment program that



encompasses a portion of the requirements in Rules .0905 and .0906 of this Section, as designated by the Division Director. In making the decision to allow modified pretreatment program development and implementation, the Division Director may consider factors including percent industrial flow, industrial waste characteristics, compliance status of the facility, and the potential for industrial growth.

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0905 POTW PRETREATMENT PROGRAM IMPLEMENTATION REQUIREMENTS**

Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.8(f) and (g) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3). In general, the implementation of a pretreatment program involves the updating of the sewer use ordinance (SUO); implementation of industrial waste survey (IWS) activities; updating of the headworks analysis (HWA), or technical basis for local limits; implementation of the long or short term monitoring plan (LTMP/STMP); implementation of compliance activities, including sampling and inspection of significant industrial users; maintenance of control authority organization description; maintenance of staffing and funding information; implementation of the enforcement response plan (ERP), and reporting to the Division on pretreatment program activities.

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; 153A-274; 153A-275; 160A-311; 160A-312;  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0906 SUBMISSION FOR PRETREATMENT PROGRAM APPROVAL**

(a) Except where in conflict with any part of this Section, the regulations regarding the contents of pretreatment programs submitted for approval and the contents of a request to revise national categorical pretreatment standards, promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.9 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

(b) In addition to the contents of a control authority pretreatment program submission described in Paragraph (a) of this Rule, the program submission shall contain:

- (1) a sewer use ordinance (SUO) providing the legal authority for implementing the pretreatment program, along with an attorney's statement, as required by 40 CFR Part 403.8 (f)(1) and Rule .0905 of this Section. Where the control authority accepts wastewater from one or more satellite POTWs and is the control authority within the satellite POTW's service area, the attorney's statement for that control authority shall document the interlocal agreements (ILAs) authorized by G.S. 153A-278 and 160A-460 et seq and SUO sections that establish the control authority's authority for regulation within all satellite POTW services areas which are tributary to the control authority's POTW. Where a satellite POTW serves as the control authority within its service area, the attorney's statement for that control authority shall document the ILAs and SUO sections that establish the satellite POTW's authority for regulation within its service area and the requirements for the satellite POTW to implement its pretreatment program in accordance with the downstream POTW's SUO and the ILA. In either case, where the POTW organizations have other written procedures to outline responsibilities not covered by the ILA or SUO, the applicable attorney's statements shall also include documentation of these procedures and the source of their enforceability;
- (2) an industrial waste survey (IWS), or industrial user survey, as defined in Subparagraph (13) of Rule .0905(b) of this Section;
- (3) a monitoring plan to provide POTW site-specific data for the HWA and subsequent technical evaluations of local limits to satisfy the requirements of 40 CFR Part 122.21(j). Modified pretreatment programs developed under Rule .0904(b) of this Section shall be allowed to implement a short term monitoring plan (STMP);

- (4) a headworks analysis (HWA) and supporting documentation, including POTW site-specific and relevant literature data, upon which to base industrial user-specific effluent limits and other local limits for prohibited pollutants (as defined in 40 CFR Parts 403.5(a) and (b) and Rule .0909 of this Section);
- (5) a compliance monitoring program, including inspection, sampling, equipment, and other compliance procedures, which will implement the requirements of 40 CFR Parts 403.8(f) and 403.12, and Rules .0905 and .0908 of this Section;
- (6) draft industrial user pretreatment permits for significant industrial users as required by 40 CFR Parts 403.8(f)(1)(iii) and 403.9(b)(1)(ii) and Rule .0916 of this Section, and supporting documentation outlined in Rules .0916 and .0917 of this Section;
- (7) procedures for approving the construction of pretreatment facilities by industrial users and for permitting industrial users for construction, operation and discharge as required by G.S. 143-215.1; procedures for approving construction shall include issuance of authorization to construct, as appropriate;
- (8) an enforcement response plan (ERP) as required by 40 CFR Parts 403.8(f)(5) and 403.9(b)(1)(ii) for identifying violations of and enforcing specific local limits and other pretreatment requirements as required by and specified in 40 CFR Parts 403.5 and 403.6 and Rules .0909 and .0910 of this Section;
- (9) a brief description (including organization charts) of the control authority which will administer the pretreatment program. Where more than one POTW organization is involved in the POTW wastewater collections or treatment system, the description shall address all the agencies, including identification of which party will receive Industrial User applications for new and changed discharges and how the parties will communicate on significant industrial user determinations;
- (10) a description of funding levels and full- and part-time manpower available to implement the program;
- (11) a description of data management procedures for compiling and managing compliance, LTMP/STMP, and any other pretreatment-related monitoring data, including documentation of approval of electronic reporting procedures as required under 40 CFR Part 3 if applicable; and
- (12) a request for pretreatment program approval as required by 40 CFR Part 403.9 and this Section.

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6; Eff. March 28, 1980; Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0907 PROCEDURES FOR PRETREATMENT PROGRAM APPROVAL, REVISION AND WITHDRAWAL**

- (a) Procedures for approval of a control authority pretreatment program and for removal credit authorization are as follows:
  - (1) Except where in conflict with any part of this Section, the approval procedures for control authority pretreatment programs and applications for removal credit authorization promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.11 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3); and
  - (2) Upon program approval, a control authority is delegated, subject to the provisions of Rules .0916 and .0917 of this Section, the authority to issue the construction, operation and discharge permits required by G.S. 143-215.1(a) for those significant industrial users discharging or proposing to discharge to the POTW;
- (b) Either the Division or the control authority may initiate program revisions. The control authority shall submit a request to the Division for approval of modifications to its approved pretreatment program, including, but not limited to its legal authority, or sewer use ordinance (SUO), headworks analysis (HWA), long or short term monitoring plan (LTMP/STMP), enforcement response plan (ERP), summary of industrial waste survey (IWS) activities, and revisions to the list of significant industrial users (SIUs). Revisions to an approved pretreatment program shall be accomplished as follows:
  - (1) the control authority shall submit a modified program description, an attorney's statement if the legal authority of the program is being modified, and other documents as the Division Director determines to be necessary under the circumstances. The attorney's statement may consist merely of a verification that the North Carolina model pretreatment sewer use ordinance is proposed for adoption by the control authority, if that is the case;
  - (2) whenever the Division Director determines that the proposed program modifications are substantial as defined in 40 CFR Part 403.18(b), the Division shall issue public notice and provide an opportunity for public comment as described in Rules .0109 and .0110 of this Subchapter. Public notices issued by the control authority are deemed sufficient notice;

- (3) the Division Director or his/her delegate shall approve or disapprove program revisions based on the requirements of this Section, G.S. 143-215.1, G.S. 143-215.3 and the Water Quality Memorandum of Agreement between the Division and the EPA; and
  - (4) Except as specified below, a pretreatment program revision shall become effective upon written approval of the Division Director:
    - (A) Pretreatment permits: See Rule .0917(d); and
    - (B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list in which to make general comments upon, objections to or recommendations with respect to the request. Unless such an objection or request for more information is made, the request shall be final and binding;
- (c) The Division Director may withdraw pretreatment program approval when a control authority no longer complies with requirements of this Section and the control authority fails to take corrective action. The following procedures apply when the Division Director determines that program withdrawal may be needed:
- (1) The Division Director shall give the control authority 180 days notice of the program withdrawal;
  - (2) the control authority shall submit within 60 days of such notice a plan for the orderly transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports and permit applications) which is necessary for the Division to administer the pretreatment program;
  - (3) within 60 days of the receipt of the control authority transfer plan, the Division Director shall evaluate the control authority plan and shall identify any additional information needed by the Division for program administration or identify any other deficiencies in the plan; and
  - (4) at least 30 days before the program withdrawal, the Division Director shall publish public notice of the program transfer and shall mail notice to all pretreatment permit holders of the control authority;
- (d) Applications for removal credit authorization shall be made in accordance with procedures established by this Rule. Approval shall become effective upon written approval of the Division Director.
- (e) A pretreatment program is considered inactive when industrial users defined as significant industrial users no longer discharge to the POTW, based on modifications of the control authority pretreatment program approved by the Division. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW. When required by the Division to return to active status, a control authority may be required to update any or all of the requirements listed in Rule .0906 of this Section that no longer meet the standards of these Rules. The control authority shall obtain Division approval of the reactivation under this Rule prior to commencement of discharge of the significant industrial user.
- (f) The Division may require that representatives of modified pretreatment programs developed under Rule .0904(b) of this Section meet with Division personnel periodically to discuss implementation of and revisions to their modified pretreatment program.

*History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e); 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.*

#### **15A NCAC 02H .0908 REPORTING/RECORD KEEPING REQUIREMENTS FOR POTWS/INDUSTRIAL USERS**

- (a) Except where in conflict with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the Environmental Protection Agency and codified as 40 CFR Parts 403.8(g) and 403.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).
- (b) Control authorities with active approved pretreatment programs shall submit once per year a pretreatment report describing its pretreatment activities over the previous 12 months. Two copies of each pretreatment report shall be submitted to the Division by March 1 of each year for activities conducted for two six-month periods, January 1 through June 30 and July 1 through December 31 of the previous year. This annual report shall contain the following information in accordance with forms provided by the Division:
  - (1) a narrative summary of actions taken by the control authority to ensure compliance with pretreatment requirements;
  - (2) a pretreatment program summary on forms or in a format provided by the Division;

- (3) a list of industrial users in significant noncompliance with pretreatment requirements, the nature of the violations, and actions taken or proposed to correct the violations; on forms or in a format provided by the Division;
  - (4) an allocation table as described in Rule .0916(c)(4) of this Section; and
  - (5) other information which in the opinion of the Division Director is needed to determine compliance with the implementation of the pretreatment program, including, but not limited to, significant industrial user compliance schedules, public notice of industrial users in significant noncompliance, a summary of significant industrial user effluent monitoring data as described in Paragraphs (a) and (e) of this Rule, a summary of information related to significant non-compliance determination for industrial users that are not considered significant industrial users, and Long or Short Term Monitoring Plan data on forms or in a format provided by the Division;
- (c) In lieu of submitting annual reports as described in Paragraph (b) of this Rule, the Division Director may allow modified pretreatment programs developed under Rule .0904(b) of this Section to submit only a partial annual report, or to meet with Division personnel as required to discuss enforcement of pretreatment requirements and other pretreatment implementation issues.
- (d) Inactive pretreatment programs are not required to submit the report described in Paragraphs (b) and (c) of this Rule. Inactive approved pretreatment programs shall notify the Division when a significant industrial user proposes to discharge to the POTW and shall comply with Rule .0907 of this Section.
- (e) Samples shall be collected and analyzed by the control authority independent of the industrial users for each significant industrial user as follows:
- (1) Except as specified below, a minimum of once each year for all permit-limited parameters including flow:
    - (A) Independent monitoring of the industrial user by the control authority is not required for pollutants which are limited by a categorical standard for which specific certification or other alternative procedures apply where the industrial user submits the required documentation for that certification or procedure, even if the industrial user chooses to monitor in addition to using certification or other alternative procedures;
    - (B) The minimum frequencies in this Subparagraph shall be reduced by half for all permit-limited parameters at a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria under 40 CFR Part 403.12(e)(3) (Middle Tier CIU), [after 403.8(f)(2)(v)(C)]; and
    - (C) For categorical parameters with monitoring waived under 40 CFR Part 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit (40 CFR Part 403.8(f)(2)(v)(A)); and
  - (2) If the control authority elects to sample and analyze in lieu of the industrial user, the control authority shall collect and analyze for the required parameters and, if applicable, in accordance with categorical standards;
- (f) Records Retention:
- (1) Control authorities and industrial users shall retain for three years records of monitoring activities and results along with supporting information including annual pretreatment reports, general records, water quality records, and records of industrial user impact on the POTW;
  - (2) Other documents required by any portion of this Section (including supporting information) for other pretreatment program elements, such as pretreatment permits (IUPs), HWAs, SUOs, ERPs, etc., shall be retained for three years after the document has expired or been updated or replaced;
  - (3) A summary of all significant industrial user effluent monitoring data reported to the control authority by the industrial user or obtained by the control authority shall be maintained on forms or in a format provided by the Division for review by the Division; and
  - (4) Also see Rule .0805 of this Subchapter for laboratory records retention requirements.
- (g) Forms or format deviating from Division provided forms or format for all documents and supporting information required by any portion of this Section shall contain all required information in a logical order or, if appropriate, in a computer-compatible format.
- (h) In the case where the receiving POTW treatment plant is not owned by the same local governmental organization as the control authority, all information required to be reported to the industrial user's control authority by this Section shall also be submitted to the POTW treatment plant governmental organization.
- (i) In the case where the control authority accepts electronic reporting, the reporting shall comply with 40 CFR Part 3, and the control authority shall maintain documentation of approval as required under 40 CFR Part 3.

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.2; 143-215.3(a)(2); 143-215.3(a)(14); 143-215.6(a)(1); 143-215.63 through 143-215.69; 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0909 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES**

The regulations regarding national prohibited pretreatment standards and local limits development and enforcement promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.5 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0910 NATIONAL PRETREATMENT STANDARDS: CATEGORICAL STANDARDS**

The regulations regarding national categorical pretreatment standards promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.6 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0911 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT**

*History Note:* Authority G.S. 143-215.1(a),(b); 143-215.3(a)(14);  
Eff. March 28, 1980;  
Amended Eff. December 1, 1984;  
Repealed Eff. October 1, 1987.

#### **15A NCAC 02H .0912 ADJUSTMENTS FOR FUNDAMENTALLY DIFFERENT FACTORS**

The regulations regarding variances from national categorical pretreatment standards for fundamentally different factors promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.13 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 143-215.3(e); 150B-21.6;  
Eff. March 28, 1980;  
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0913 PUBLIC ACCESS TO INFORMATION**

(a) Information and data provided by an industrial user to the POTW Director pursuant to this Section, identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Information and data provided by an industrial user to the Division Director shall be subject to the processes set forth in G.S. 143-215.3C.

(c) Information provided by an industrial user to a control authority that is determined to be entitled to confidential treatment shall be made available upon written request to the Division or any state agency for uses related to the pretreatment program, the National Pollutant Discharge Elimination System (NPDES) permit, collection system permit, stormwater permit, or non-

discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

(d) Information and data received by the Division or other state agency under Paragraph (c) of this Rule shall be subject to the processes set forth in G.S. 143-215.3C.

*History Note:* Authority G.S. 132-1.2; 132-6; 132-9; 143-215.1; 143-215.3; 143-215.3C;  
Eff. March 28, 1980;  
Amended Eff. April 1, 2011; October 1, 1987.

#### **15A NCAC 02H .0914 UPSET PROVISION**

The upset provision promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.16 is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;  
Eff. December 1, 1984;  
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

#### **15A NCAC 02H .0915 NET/GROSS CALCULATION**

The net/gross calculation provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.15 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14); 150B-21.6;  
Eff. December 1, 1984;  
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987.

#### **15A NCAC 02H .0916 PRETREATMENT PERMITS**

(a) All significant industrial users who discharge waste into a POTW or who construct or operate a pretreatment facility shall obtain a permit from the control authority.

(b) Where the Division is the control authority, permits shall be issued in accordance with Section .0100 of this Subchapter.

(c) Where the control authority is a POTW organization, significant industrial user permits shall be issued as follows:

- (1) Application: any significant industrial user required to obtain a permit in Paragraph (a) of this Rule shall be required to complete, sign and submit to the control authority a permit application. Application fees and procedures may be prescribed by the control authority. All pretreatment permit applications shall include as a minimum:
  - (A) name of industrial user;
  - (B) address of industrial user;
  - (C) standard industrial classification (SIC) code(s) or expected classification and industrial user category;
  - (D) wastewater flow;
  - (E) types and concentrations (or mass) of pollutants contained in the discharge;
  - (F) major products manufactured or services supplied;
  - (G) description of existing on-site pretreatment facilities and practices;
  - (H) locations of discharge points;
  - (I) raw materials used or stored at the site;
  - (J) flow diagram or sewer map for the industrial user;
  - (K) number of employees;
  - (L) operation and production schedules; and
  - (M) description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);
- (2) Renewals: Applications for pretreatment permit renewals shall be accomplished by filing an application form as listed in Subparagraph (c)(1) of this Rule prior to permit expiration. The number of days prior to expiration by which the application shall be filed shall be established by the control authority;

- (3) Review and Evaluation:
- (A) The POTW Director is authorized to accept applications for the Commission and shall refer all applications to the control authority staff for review and evaluation;
  - (B) The POTW Director shall acknowledge receipt of a complete application, or if not complete, shall return the application to the applicant with a statement of what additional information is required;
  - (C) The control authority staff shall include documentation of the most recent on site inspection of the industrial user and any existing wastewater pretreatment system as part of the permit record for new and renewed permits; and
  - (D) The control authority staff shall conduct an evaluation and make a tentative determination to issue or deny the permit. If the control authority staff's tentative determination is to issue the permit, it shall make the following additional determinations in writing and transmit them to the industrial user:
    - (i) proposed effluent limitations for those pollutants proposed to be limited;
    - (ii) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
    - (iii) a description of any other proposed special conditions which will have significant impact upon the discharge described in the application;The control authority staff shall organize the determinations made into a pretreatment permit;
- (4) Permit supporting documentation. The control authority staff shall prepare the following documents for all significant industrial user permits:
- (A) An allocation table (AT) listing permit information for all significant industrial users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format provided by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised;
  - (B) The basis, or rationale, for the pretreatment limitations, including documentation of categorical determination, including documentation of any calculations used in applying categorical standards; and
  - (C) Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2);
- (5) Final Action on Permit Applications:
- (A) The POTW Director shall take final action on all applications by either issuing a pretreatment permit or by denying the discharge not later than 90 days following the receipt of a complete application. If, following the 30 day period required by Rules .0917(d) and .0922 of this Section, no written demand for hearing, objection, or request for more information under Rule .0917(f)(2) of this Section has been made, the permit shall become final and binding;
  - (B) The POTW Director is authorized to:
    - (i) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1;
    - (ii) issue a permit containing time schedules for achieving compliance with applicable pretreatment standards and limitations and other legally applicable requirements;
    - (iii) modify or revoke any permit pursuant to Subparagraph (c)(6) of this Rule;
    - (iv) deny a permit application;
    - (v) issue permits to industrial users not identified as significant industrial users using procedures prescribed by the control authority; and
    - (vi) require industrial users to develop a waste reduction plan and implement waste reduction techniques and technologies;
  - (C) Permits shall be issued or renewed for a period of time deemed reasonable by the POTW Director but in no case shall the period exceed five years; and
  - (D) The POTW Director shall notify an applicant by certified or registered mail of the denial of his/her permit application. Notifications of denial shall specify the reasons for the denial and the proposed changes which in the opinion of the POTW Director will be required to obtain the permit;
- (6) Modification and Revocation of Permits:

- (A) Any permit issued pursuant to this Rule is subject to revocation or modification in whole or part as outlined in the control authority's sewer use ordinance; and
- (B) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows:
  - (i) changes in the ownership of the discharge when no other change in the permit is indicated;
  - (ii) a single modification of any compliance schedule not in excess of four months;
  - (iii) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational; or
  - (iv) modifications of the monitoring requirements in the permit; and
- (7) Permit effective dates and modification effective dates shall not be retroactive.

*History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.3(e); Eff. October 1, 1987; Amended Eff. April 1, 2011; November 1, 1994.*

### **15A NCAC 02H .0917 PRETREATMENT PERMIT SUBMISSION AND REVIEW**

- (a) Upon issuance, each control authority shall transmit to the Division copies of all issued significant industrial user pretreatment permits.
- (b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting information listed below. Permit modification submissions for significant industrial users shall include updated versions of this supporting information listed below as applicable to that modification:
  - (1) the rationale for limits and allocation table required by Rule .0916(c)(4) of this Section;
  - (2) a copy of the completed application required in Rule .0916(c)(1) of this Section; and
  - (3) a copy of the record of the inspection required in Rule .0916(c)(3)(C) of this Section;
- (c) The Division Director may waive some or all of the requirements in Paragraphs (a) and (b) of this Rule. In making the decision to waive these requirements, the Division Director may consider factors including but not limited to training levels of control authority staff, quality of previous pretreatment permit submissions, percent maximum allowable headworks loading capacity remaining, percent industrial user flow, industrial user waste characteristics, and compliance status of the POTW and its respective environmental permits.
- (d) The Division shall have 30 days from the receipt of pretreatment permits in which to make general comments upon, objections to or recommendations with respect to the permit. Unless such an objection or request for more information in accordance with Paragraph (g) of this Rule is made, the permit shall be final and binding.
- (e) Within 30 days of the receipt of a pretreatment permit to which the Division Director has objected the Division staff shall set forth in writing and transmit to the control authority:
  - (1) A statement of the reasons for the objection, including the rules or regulations that support the objection; and
  - (2) The actions which shall be taken by the control authority to eliminate the objection including the effluent limitations and conditions which the permit would include if it were issued by the Division;
- (f) The Division Director's objection to the issuance of a pretreatment permit shall be based upon one or more of the following grounds:
  - (1) the permit fails to apply or to ensure compliance with any applicable requirement of this Section;
  - (2) the procedures followed in connection with formulation of the pretreatment permit failed to comply with the procedures required by state statute or by the control authority's approved pretreatment program;
  - (3) a finding made by the control authority in connection with the pretreatment permit which misinterprets any categorical standard or pretreatment regulation or misapplies them to the facts; and
  - (4) the provisions of the pretreatment permit relating to the maintenance of records, monitoring or sampling by the control authority and the industrial user are, in the judgment of the Division Director, inadequate to assure compliance with permit conditions or applicable pretreatment standards;
- (g) Prior to notifying the control authority of an objection, the Division Director:
  - (1) shall consider all data transmitted pursuant to Rules .0916 and .0917 of this Section;
  - (2) may, if more information is needed to determine whether the permit is adequate, request the control authority to make available to the Division staff the complete record of permit proceedings, or any portions



of the record that the Division Director determines are necessary for review. Requests shall be made within 30 days of the Division's receipt of the permit under Rule .0916 of this Section, and shall suspend the 30 day review period in Paragraph (d) of this Rule. When the Division staff has obtained the requested records or portions of the record, the Division staff shall have an additional 30 days for review; and

(3) may, to the extent feasible within the period of time available, afford interested persons the opportunity to comment on the basis for the objection; and

(h) If within 60 days of the receipt of the Division Director's objection the control authority does not resubmit a permit revised to meet the Division Director's objection, the Division Director may issue the permit in accordance with Section .0100 of this Subchapter. Exclusive authority to issue the permit required by G.S. 143-215.1(a) passes to the Division when this time expires.

*History Note:* Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.3(a)(3) ; 143-215.3(a)(14); 143-215.3(e);  
Eff. October 1, 1987;  
Amended Eff. April 1, 2011; November 1, 1994.

### **15A NCAC 02H .0918 LOCAL LAW**

Nothing in the rules of this Section is intended to affect any pretreatment requirements, including any standards or prohibitions, established by local law as long as the local requirements are not less stringent than any set forth in National Pretreatment Standards, or any other requirements or prohibitions established under the Clean Water Act, the North Carolina General Statutes, or the rules of this Section.

*History Note:* Authority G.S. 143-215.1(a), (b); 143-215.3(a)(1), (14); 153A-274; 153A-275;  
160A-311; 160A-312;  
Eff. November 1, 1994.

### **15A NCAC 02H .0919 BYPASS**

The regulations regarding the bypass provisions promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.17 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note:* Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14); 150B-21.6;  
Eff. November 1, 1994;  
Amended Eff. March 1, 2011.

### **15A NCAC 02H .0920 PRETREATMENT FACILITY OPERATION AND MAINTENANCE**

(a) Upon classification of pretreatment facilities permitted under this Section and upon development of specific certification and training programs for operators of classified facilities, the industrial user shall designate an operator in responsible charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.

(b) In order to insure the proper operation and maintenance of facilities permitted under this Section and classified under the rules of the Water Pollution Control System Operators Certification Commission (Subchapter 08G of these Rules), the operator in responsible charge, or a back-up operator when appropriate, shall operate and visit the facility as required by the Water Pollution Control System Operators Certification Commission as established in Subchapter 08G of these Rules.

(c) Copies of rules referenced in this Rule may be obtained at the following locations:

- (1) <http://portal.ncdenr.org/web/wq/admin/tacu>; and
- (2) the North Carolina Department of Environment and Natural Resources, Division of Water Quality  
Offices of the Technical Assistance and Certification Unit (TACU)  
Physical Address: 219 North East Street  
Raleigh, N.C. 27601  
Mailing Address: 1618 Mail Service Center  
Raleigh, N.C. 27699-1618.

*History Note:* Authority G.S. 143-215.3;

*Eff. November 1, 1994;*  
*Amended Eff. April 1, 2011.*

**15A NCAC 02H .0921 REVISION TO REFLECT POTW REMOVAL OF POLLUTANT**

The regulations regarding removal credits promulgated by the Environmental Protection Agency and codified as 40 CFR Part 403.7 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the locations listed in Rule .0901 of this Section and at [http://cfpub1.epa.gov/npdes/home.cfm?program\\_id=3](http://cfpub1.epa.gov/npdes/home.cfm?program_id=3).

*History Note: Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14); 150B-21.6;*  
*Eff. November 1, 1994;*  
*Amended Eff. March 1, 2011.*

**15A NCAC 02H .0922 HEARINGS**

(a) The control authority sewer use ordinance (SUO) and attorney's statement required under Rule .0906(b)(1) shall provide for the effective enforcement and compliance with its pretreatment program in accordance with the provisions of G.S. 160A-175 for municipalities, G.S. 153A-123 for counties, G.S. 162A-9.1 for water and sewer authorities and G.S. 162A-81 for metropolitan sewerage districts. This shall include:

- (1) providing industrial users assessed civil penalties by the control authority for violations of its pretreatment program with the opportunity to request review of the penalty in accordance with the provisions of G.S. 143-215.6A(k); and
- (2) providing industrial users the opportunity to request review of other actions taken by the control authority to administer and enforce its pretreatment program. Such control authority actions may include denial or termination of a pretreatment permit or other permission to discharge, issuance of a permit or other permission to discharge subject to conditions the industrial users deems unacceptable, and the issuance of an administrative order subject to conditions the industrial users deems unacceptable. The opportunity to request review may include the right to request a review of a control authority action with the local government as established in that local government's SUO, or to request a review by the superior court having local jurisdiction.

(b) If the control authority elects to provide industrial users with the opportunity for local government reviews under Subparagraphs (a)(1) and (a)(2) of this Rule, the control authority may establish procedures and requirements for the review process. These procedures may include the number of days after receipt of an action by which the industrial user must request the review, the contents or form of the request, and which party or parties will conduct local government hearings.

*History Note: Authority G.S. 143-215(a); 143-215.1(a); 143-215.1(c); 143-215.1(g); 143-215.2(b); 143-215.3(a)(3); 143-215.3(a)(14); 143-214.3(e); 143-215.6A(j); 143-215.6A(k); 153A-123; 160A-175; 162A-9.1; 162A-81;*  
*Eff. April 1, 2011.*

**SECTION .1000 - STORMWATER MANAGEMENT**

**15A NCAC 02H .1001 POST-CONSTRUCTION STORMWATER MANAGEMENT: PURPOSE AND SCOPE**

The purpose of this Section is to protect surface waters and aquatic resources from the adverse impacts of stormwater runoff from development activities.

- (1) **APPLICABILITY.** This Section shall apply to development projects and major modifications of development projects for residential, commercial, industrial, or institutional use that are subject to one or more of the post-construction stormwater management programs listed in Item (2) of this Rule. This Section shall not apply to:
  - (a) land management activities associated with agriculture or silviculture;
  - (b) activities of the North Carolina Department of Transportation (NCDOT) that are regulated in accordance with the provisions of NPDES Permit Number NCS000250;
  - (c) linear transportation projects undertaken by an entity other than the NCDOT when:
    - (i) the project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices Toolbox (Version 2, April 2014 Edition) which is herein incorporated by reference, including any subsequent amendments and editions,

- and may be accessed at no cost at [https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014\\_BMP\\_Toolbox.pdf](https://connect.ncdot.gov/resources/hydro/HSPDocuments/2014_BMP_Toolbox.pdf);
- (ii) upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
  - (iii) the project is not part of a common plan of development;
- (d) development activities that have already received a State Stormwater Permit or Certification where no modification or a minor modification is requested. These activities shall follow their existing permit conditions.
  - (e) airport facilities that are deemed permitted in accordance with G.S. 143-214.7(c4); and
  - (f) "redevelopment" as the term is defined in G.S. 143-214.7(a1).
- (2) **STORMWATER PROGRAMS.** The post-construction stormwater management programs consist of the following:
- (a) Coastal Counties – 15A NCAC 02H .1019;
  - (b) Non-Coastal County High Quality Waters and Outstanding Resource Waters – 15A NCAC 02H .1021;
  - (c) NPDES MS4 Stormwater – 15A NCAC 02H .0126; 15A NCAC 02H .0150, .0151; 15A NCAC 02H .0153; 15A NCAC 02H .1017;
  - (d) Urbanizing Areas – 15A NCAC 02H .1016; and
  - (e) Universal Stormwater Management Program - 15A NCAC 02H .1020.
- (3) **PERMIT REQUIRED.** A permit shall be required for development activities that are subject to any of the post-construction stormwater management programs listed in Item (2) of this Rule. The permit shall be issued by the implementing authority in accordance with this Section. If a project is subject to more than one post-construction stormwater management program, the requirements of both programs shall apply unless otherwise required or allowed by the applicable rule of this Section.
- (4) **DISPUTES REGARDING WATER QUALITY CLASSIFICATION.** For stormwater programs that apply based on water quality classification, any disputes regarding water quality classification shall be determined by the N.C. Division of Water Resources pursuant to 15A NCAC 02B .0101 and in accordance with G.S. 143-214.1.
- (5) **PRIOR AUTHORIZATIONS.** A development project shall not be required to comply with this Section or shall be allowed to follow an earlier version of the rules of this Section available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> if it is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the applicable rule of this Section, 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(b)(3) or G.S. 160A-385.1 that shows:
    - (i) for the initial or first phase of development, the type and intensity of uses 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 or G.S. 160A-371 through G.S. 160A-376; and
    - (ii) for any subsequent phase of development, sufficient detail that demonstrates to the permitting authority that implementation of the requirements of this Section 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; or
  - (d) a vested right to the development pursuant to common law.
- (6) **ANTI-DEGRADATION POLICY.** Development projects that are subject to this Section shall comply with the Antidegradation Policy set forth in 15A NCAC 02B .0201.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2014-1; Eff. January 1, 1988; Amended Eff. September 1, 1995; Readopted Eff. January 1, 2017.*

## **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. Definitions set forth in 15A NCAC 02H .0150 and 40 CFR 122.2 and 122.26(b) (1 July 2015 Edition) are incorporated herein by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. Other words and phrases used in this Section are defined as follows:

- (1) "Adverse impact" means a detrimental effect upon water quality or best usages, including a violation of water quality standards, caused by or contributed to by a discharge or loading of a pollutant or pollutants.
- (2) "Best usage" means those uses of waters specified for each classification as determined by the Commission in accordance with the provisions of G.S. 143-214.1 and as set forth in 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0300.
- (3) "Built-upon area" or "BUA" has the same meaning as in G.S. 143-214.7.
- (4) "CAMA Major Development Permits" means those permits or revised permits required by the Coastal Resources Commission as set forth in 15A NCAC 07J Sections .0100 and .0200.
- (5) "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.
- (6) "Coastal Counties" means any of the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (7) "Commission" means the North Carolina Environmental Management Commission.
- (8) "Common plan of development" means a site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.
- (9) "Curb Outlet System" means curb and gutter with breaks or other outlets used to convey stormwater runoff to vegetated conveyances or other vegetated areas.
- (10) "Design volume" means the amount of stormwater runoff that an SCM or series of SCMs is designed to treat.
- (11) "Development" has the same meaning as in G.S. 143-214.7.
- (12) "Director" means the Director of the Division of Energy, Mineral, and Land Resources.
- (13) "Dispersed flow" means uniform shallow flow that is conveyed to a vegetated filter strip as defined in Rule .1059 of this Section, another vegetated area, or stormwater control measure. The purpose of "dispersed flow" is to remove pollutants through infiltration and settling, as well as to reduce erosion prior to stormwater reaching surface waters.
- (14) "Division" means the Division of Energy, Mineral, and Land Resources.
- (15) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (16) "Erosion and Sedimentation Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.
- (17) "Existing development" means those projects that are built or those projects that have established a vested right under North Carolina law as of the effective date of the state stormwater program or applicable local government ordinance to which the project is subject.
- (18) "General Permit" means a permit issued under G.S. 143-215.1(b)(3) and G.S. 143-215.1(b)(4) authorizing a category of similar activities or discharges.
- (19) "Geotextile fabric" means a permeable geosynthetic comprised solely of non-biodegradable textiles.
- (20) "Infiltration Systems" means stormwater control measures designed to allow runoff to move into the soil's pore space.
- (21) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0233.
- (22) "Local government" has the same meaning as in 15A NCAC 02B .0202.

- (23) "Major modification" means a change of a state stormwater permit that is not a "minor modification" as that term is defined in this Rule.
- (24) "Minimum Design Criteria" or "MDC" means the requirements set forth in this Section for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1.
- (25) "Minor modification" means a change of a state stormwater permit that does not increase the net built-upon area within the project or does not increase the overall size of the stormwater control measures that have been approved for the project.
- (26) "Non-erosive velocity" means the flow rate of water, usually measured in feet per second, that does not exceed the maximum permissible velocity for the condition and type of soil and groundcover over which the water is flowing. Erosion occurs when the maximum permissible velocity is exceeded.
- (27) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit in lieu of an application for an individual permit.
- (28) "NPDES" means National Pollutant Discharge Elimination System.
- (29) "Off-site Stormwater Systems" means 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.
- (30) "One-year, 24-hour storm" means the maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.
- (31) "On-site Stormwater Systems" means the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (32) "Peak attenuation volume" means stormwater runoff in excess of the design volume that is conveyed to an SCM where it is not treated in accordance with the applicable MDC, but is released by the SCM in a controlled manner to address potential downstream erosion and flooding impacts to meet federal, State, or local regulations beyond the requirements of this Section.
- (33) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0233.
- (34) "Perennial stream" has the same meaning as in 15A NCAC 02B .0233.
- (35) "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.
- (36) "Person" has the same meaning as in G.S. 143-212(4).
- (37) "Primary SCM" means a wet pond, stormwater wetland, infiltration system, sand filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.
- (38) "Project" means the proposed development activity for which an applicant is seeking a stormwater permit from the state or other entity in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.
- (39) "Public linear transportation project" means a project consisting of a road, bridge, sidewalk, greenway, or railway that is on a public thoroughfare plan or provides improved access for existing development and that is owned and maintained by a public entity.
- (40) "Required storm depth" means the minimum amount of rainfall that shall be used to calculate the required treatment volume or to evaluate whether a project has achieved runoff volume match.
- (41) "Redevelopment" has the same meaning as in G.S. 143-214.7.
- (42) "Residential development" has the same meaning as in 15A NCAC 02B .0202.
- (43) "Runoff treatment" means that the volume of stormwater runoff generated from all of the built-upon area of a project at build-out during a storm of the required storm depth is treated in one or more primary SCMs or a combination of Primary and Secondary SCMs that provides equal or better treatment.

- (44) "Runoff volume match" means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development, except in areas subject to SA waters requirements per Rule .1019 of this Section where runoff volume match means that the annual runoff volume after development shall not be more than five percent higher than the annual runoff volume before development.
- (45) "Seasonal High Water Table" or "SHWT" means the highest level of the saturated zone in the soil during a year with normal rainfall. SHWT may be determined in the field through identification of redoximorphic features in the soil profile, monitoring of the water table elevation, or modeling of predicted groundwater elevations.
- (46) "Secondary SCM" means an SCM that does not achieve the annual reduction of Total Suspended Solids (TSS) of a "Primary SCM" but may be used in a treatment train with a primary SCM or other Secondary SCMs to provide pre-treatment, hydraulic benefits, or a portion of the required TSS removal.
- (47) "Stormwater" has the same meaning as in G.S.143-213(16a).
- (48) "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 in this Section.
- (49) "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.
- (50) "Ten-year storm intensity" means the maximum rate of rainfall of a duration equivalent to the time of concentration expected, on the average, once in 10 years. Ten-year storm intensities are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.
- (51) "Vegetated setback" means an area of natural or established vegetation adjacent to surface waters, through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.
- (52) "Vegetated 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.
- (53) "Water Dependent Structures" means a structure that requires access, proximity to, or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, or bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and boat storage areas shall not be considered water dependent structures.

*History Note: Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1); Eff. January 1, 1988; Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (f)); July 3, 2012; December 1, 1995; September 1, 1995; Temporary Amendment Eff. March 28, 2014; Amended Eff. January 1, 2015; Readopted Eff. January 1, 2017.*

### **15A NCAC 02H .1003 REQUIREMENTS THAT APPLY TO ALL PROJECTS**

The following requirements shall apply to projects subject to any North Carolina stormwater program set forth in Rule .1001 of this Section.

- (1) **CALCULATION OF PROJECT DENSITY.** The following requirements shall apply to the calculation of project density:
  - (a) Project density shall be calculated as the total built-upon area divided by the total project area;
  - (b) A project with existing development may use the calculation method in Sub-Item (1)(a) or shall have the option of calculating project density as the difference of total built-upon area minus

existing built-upon area divided by the difference of total project area minus existing built-upon area;

- (c) Total project area shall exclude the following:
    - (i) areas below the Normal High Water Line (NHWL); and
    - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including any subsequent amendments and editions, and may be accessed at no cost at <http://reports.oah.state.nc.us/ncac.asp> as measured landward from the Normal High Water (NHW) line; and
  - (d) On a case-by-case basis as determined by the Division during application review, projects may be considered to have both high and low density areas based on one or more of the following criteria:
    - (i) natural drainage area boundaries;
    - (ii) variations in land use throughout the project; and
    - (iii) construction phasing.
- (2) **DESIGN REQUIREMENTS FOR LOW DENSITY PROJECTS.** Low density projects shall meet the following minimum design criteria:
- (a) **DENSITY THRESHOLDS.** Low density projects shall not exceed the low density development thresholds set forth in the stormwater programs to which they are subject pursuant to Rules .1017, .1019, and .1021 of this Section. For projects subject to the requirements for Non-Coastal High Quality Waters and Outstanding Resource Waters, dwelling unit per acre may be used instead of density to establish low density status for single-family detached residential development as set forth in Rule .1021 in this Section;
  - (b) **DISPERSED FLOW.** Projects shall be designed to maximize dispersed flow through vegetated areas and minimize channelization of flow;
  - (c) **VEGETATED CONVEYANCES.** Stormwater that cannot be released as dispersed flow shall be transported by vegetated conveyances. A minimal amount of non-vegetated conveyances for erosion protection or piping for driveways or culverts under a road shall be allowed by the permitting authority when it cannot be avoided. Vegetated conveyances shall meet the following requirements:
    - (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the permitting authority that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
    - (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm as demonstrated by engineering calculations.
  - (d) **CURB OUTLET SYSTEMS.** Low density projects may use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:
    - (i) The curb outlets shall be designed such that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity;
    - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent, except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
    - (iii) The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet;
    - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
    - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
    - (vi) Low density projects may use treatment swales designed pursuant to Rule .1061 of this Section in lieu of the requirements specified in Sub-items (i) through (v) of this Item.
- (3) **DESIGN REQUIREMENTS FOR HIGH DENSITY PROJECTS.** High density projects are projects that do not conform to Item (2) of this Rule. High density projects shall meet the following minimum design criteria:
- (a) **TREATMENT REQUIREMENTS.** SCMs shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in Rule .1002 of this Section.

- (b) OFF-SITE STORMWATER. Stormwater runoff from off-site areas and existing development shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in the sizing of on-site SCMs at its full built-out potential.
  - (c) OFF-SITE SCM. A project that controls runoff through an off-site SCM shall be allowed on a case-by-case basis as determined by the permitting authority if the off-site SCM meets the provisions of Rules .1050 through .1061 of this Section.
  - (d) EXPANSION OR REPLACEMENT OF EXISTING DEVELOPMENT. When new built-upon area is added to existing development or existing development is replaced with new built-upon area, only the area of net increase shall be subject to this Section.
  - (e) MDC FOR SCMS. SCMs shall meet the relevant MDC set forth in Rules .1050 through .1062 of this Section except in accordance with Item (6) of this Rule.
- (4) VEGETATED SETBACKS. Vegetated setbacks shall be required adjacent to waters as specified in the stormwater rules to which the project is subject pursuant to this Section, in addition to the following requirements applicable to all vegetated setbacks:
- (a) The width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
  - (b) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;
  - (c) Built-upon area that meets the requirements of G.S. 143-214.7(b2)(2) shall be allowed within the vegetated setback.
  - (d) Built-upon area that does not meet the requirements of G.S. 143-214.7(b2)(2) shall be allowed within a vegetated setback when it is not practical to locate the built-upon area elsewhere, the built-upon area within the vegetated setback is minimized, and channelizing runoff from the built-upon area is avoided. Built-upon area within the vegetated setback shall be limited to:
    - (i) Publicly-funded linear projects such as roads, greenways, and sidewalks;
    - (ii) Water Dependent Structures; and
    - (iii) Minimal footprint uses such as poles, signs, utility appurtenances, and security lights.
  - (e) Stormwater that has not been treated in an SCM shall not be discharged through a vegetated setback; instead it shall be released at the edge of the vegetated setback and allowed to flow through the setback as dispersed flow.
  - (f) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.
- (5) STORMWATER OUTLETS. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (6) VARIATIONS FROM THIS SECTION. The permitting authority shall have the option to approve projects that do not comply with all of the provisions of this Section on a case-by-case basis as follows:
- (a) If the variation pertains to an SCM design that does not meet all of the MDC, then the applicant shall provide technical justification based on engineering calculations and the results of research studies showing that the proposed design provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section and that it shall function in perpetuity. The permitting authority shall have the option to require compliance with the MDC in the event that the alternative SCM design fails;
  - (b) If the variation pertains to other aspects of the project, then the applicant shall demonstrate that the project provides equal or better stormwater control and equal or better protection of waters of the State than the requirements of this Section; and
  - (c) Variations from this Section shall not be allowed if the project is being permitted under the fast-track process.
- (7) DEED RESTRICTIONS AND PROTECTIVE COVENANTS. The permittee shall record deed restrictions and protective covenants prior to the issuance of a certificate of occupancy to ensure that projects will be maintained in perpetuity consistent with the plans and specifications approved by the permitting authority. For projects owned by public entities, the permittee shall have the option to incorporate specific restrictions and conditions into a facility management plan or another instrument in lieu of deed restrictions and protective covenants.



- (8) COMPLIANCE WITH OTHER REGULATORY PROGRAMS. Project designs shall comply with all other applicable requirements pursuant to G.S. 143-214.1, G.S. 143-214.5, G.S. 143-214.7, and G.S. 143-215.3(a)(1).

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1(d); 143-215.3(a)(1); S.L. 2008-198; Eff. January 1, 1988; Amended Eff. December 1, 1995; September 1, 1995; Readopted Eff. January 1, 2017.

**15A NCAC 02H .1004 STATEWIDE STORMWATER GUIDELINES**

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.8A; Eff. January 1, 1988; Repealed Eff. September 1, 1995.

- 15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES**
- 15A NCAC 02H .1006 STORMWATER REQUIREMENTS: HIGH QUALITY WATERS**
- 15A NCAC 02H .1007 STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS**
- 15A NCAC 02H .1008 DESIGN OF STORMWATER MANAGEMENT MEASURES**
- 15A NCAC 02H .1009 STAFF REVIEW AND PERMIT PREPARATION**
- 15A NCAC 02H .1010 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**
- 15A NCAC 02H .1011 MODIFICATION AND REVOCATION OF PERMITS**
- 15A NCAC 02H .1012 DELEGATION OF AUTHORITY**
- 15A NCAC 02H .1013 GENERAL PERMITS**

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 143-215.3(a)(1); S.L. 2011-220; Eff. September 1, 1995; This Rule is superseded by S.L. 2008-211 Eff. October 1, 2008; Amended Eff. March 1, 2013; July 3, 2012; December 1, 1995; Repealed Eff. January 1, 2017.

- 15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS**
- 15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS**

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

**15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS: APPLICABILITY AND DELINEATION**

(a) Development in Unincorporated Areas of Counties.

- (1) Development that cumulatively disturbs one acre or more of land, including development that disturbs less than one acre of land that is part of a larger common plan of development or sale, that is located in the unincorporated area of a county shall comply with the standards set forth in Rule.1017 of this Section beginning 1 July 2007 if the development is located in any of the following:
  - (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 which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at: <https://www.census.gov/programs-surveys/decennial-census/data.html> 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; or
    - (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 Subparagraph (3) 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 the following equal or exceed 75 percent of the total geographic area of the county:
    - (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 (a) of Rule .0151(a) of this Subchapter;
    - (v) the area that is regulated by a NPDES MS4 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; or
  - (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, unless that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.
- (2) For purposes of this Paragraph, the stormwater programs administered by the Division shall be as follows:
- (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) Coastal Counties – 15A NCAC 02H .1019;
  - (H) Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
  - (I) Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
  - (J) Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
  - (K) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (3) 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 shall be the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule .0151(a)(2) and (3) of this Subchapter 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; or
    - (iii) 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 Part (3)(B) of this Subparagraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to have an adverse impact on water quality.
  - (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 candidate coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate 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) has an adverse impact on water quality; or
  - (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 best usages.
- (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.

- (4) Except as provided in this Subparagraph and Rule .1018 of this Section, 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 Rule .1018 of this Section.

(b) Development in Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land, including development that disturbs less than one acre of land that is part of a larger common plan of development or sale, that is located in the incorporated areas of a county described in Parts (a)(1)(D) and (E) of this Rule that are not designated as an urbanized area under the most recent federal decennial census shall comply with the standards set forth in Rule .1017 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 Rule .1018 of this Section.

*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. 2011-220; Eff. July 3, 2012; Amended Eff. July 1, 2013; Readopted Eff. January 1, 2017.

#### **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.

#### **15A NCAC 02H .1018 URBANIZING AREAS: DELEGATION**

A public entity that does not administer the requirements of a NPDES MS4 permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area pursuant to Rule .1016 of this Section 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) and (d). One paper copy of the stormwater management program shall be submitted to the Division. The stormwater management program shall include an ordinance or regulation adopted by a public entity that meets or exceeds the minimum requirements of Rules .1003 and .1017 of this Section. Two or more public entities are authorized to establish a joint program and to enter into 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 shall 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 shall be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. A complete submission shall contain the required ordinance or regulation; supporting documentation that demonstrates a public entity's stormwater management program meets the requirements of Rules .1003 and .1017 of this Section; and if applicable, certified resolutions with an effective date. 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 approve a program only upon determining that its requirements meet or exceed those of Rules .1003 and .1017 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 correct the deficiencies identified by the Commission and resume administration and enforcement of the program.

*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. 2011-220; Eff. January 1, 2017 (previously codified in 15A NCAC 02H .1016).

## **15A NCAC 02H .1019 COASTAL COUNTIES**

The purpose of this Rule is to protect surface waters in the 20 Coastal Counties from the impact of stormwater runoff from new development.

- (1) **Implementing Authority.** This Rule shall be implemented by:
  - (a) local governments and other entities within the 20 Coastal Counties that are required to implement a Post-Construction program as a condition of their NPDES permits;
  - (b) local governments and state agencies that are delegated to implement a stormwater program pursuant to G.S. 143-214.7(c) and (d); and
  - (c) the Division in all other areas where this Rule applies.
- (2) **APPLICABILITY OF THIS RULE.** This Rule shall apply to the following types of developments within the Coastal Counties:
  - (a) projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
  - (b) projects that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and
  - (c) projects that do not require either an Erosion and Sedimentation Control Plan or a CAMA Major Development Permit, but meet one of the following criteria:
    - (i) nonresidential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
    - (ii) residential projects that are within ½ mile of and draining to SA waters, and propose to cumulatively add more than 10,000 square feet of built-upon area, and result in a percentage built-upon area greater than 12 percent.
- (3) **EFFECTIVE DATES.** The effective dates are as follows:
  - (a) for prior Rule .1000 of this Section, January 1, 1988;
  - (b) for prior Rule .1005 of this Section, September 1, 1995;
  - (c) for S.L. 2006-264, August 16, 2006; and
  - (d) for S.L. 2008-211, October 1, 2008.

Prior versions of these rules are available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program>.
- (4) **GENERAL REQUIREMENTS FOR ALL PROJECTS.** In addition to the requirements of this Rule, development projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) **DETERMINATION OF WHICH COASTAL STORMWATER PROGRAM APPLIES.**
  - (a) **SA WATER.** SA Water requirements shall apply to projects located within one-half mile of and draining to waters classified as SA-HQW or SA-ORW per 15A NCAC 02B .0301.
    - (i) The SA boundary shall be measured from either the landward limit of the top of bank or the normal high water level. In cases where a water is listed on the Schedule of Classifications, but the applicant provides documentation from the Division of Water Resources or the U.S. Army Corps of Engineers that the water is not present on the ground, the applicant shall not be subject to the SA requirements of this Rule.
    - (ii) An SCM with any portion of its drainage area located within the SA waters boundary shall be designed to meet SA water requirements.
  - (b) **FRESHWATER ORW.** Freshwater ORW requirements shall apply to projects that drain to waters classified as B-ORW and C-ORW per 15A NCAC 02B .0301.
  - (c) **OTHER COASTAL COUNTY WATER.** If a project does not meet the applicability requirements for Sub-Items (5)(a) or (b) of this Rule, then it shall be subject to the other Coastal County Water requirements set forth in Item (6) of this Rule.
  - (d) **PROJECTS THAT ARE SUBJECT TO TWO OR MORE COASTAL STORMWATER PROGRAMS.** Projects with portions that are located within two or more coastal stormwater program boundaries shall meet the applicable requirements of Item (6) inside each of the project's portions.
- (6) **STORMWATER REQUIREMENTS.** Depending on the applicable program pursuant to Item (5) of this Rule, the following stormwater requirements shall apply:
  - (a) **SUMMARY OF COASTAL PROGRAM REQUIREMENTS.** The requirements shall be in accordance with the following table:

Program that Applies	Maximum BUA for Low Density	Required Storm Depth for High Density Projects	Additional Special Provisions
SA Water	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule; and the percentage built-upon area shall not exceed 25 percent within 575 feet of an SA-ORW
Freshwater ORW	12%	1.5 inch storm	None
Other Coastal County Water	24%	1.5 inch storm	None

- (b) **VEGETATED SETBACKS.** For all subject projects within the Coastal Counties, vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 50 feet in width for new development and at least 30 feet in width for redevelopment and shall comply with Rule .1003(4) of this Section.
- (7) **SCMS FOR SA WATER HIGH DENSITY PROJECTS REQUIREMENTS.** High density projects subject to SA water requirements shall use one of the following approaches for treating and discharging stormwater:
- (a) **RUNOFF VOLUME MATCH.** The project shall achieve runoff volume match, and excess runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (b) **RUNOFF TREATMENT WITH NON-DISCHARGING SCMs.** SCM(s) shall provide runoff treatment without discharging in excess of the pre-development conditions during the one-year, 24-hour storm event. The runoff volume in excess of the one-year, 24-hour runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (c) **RUNOFF TREATMENT WITH DISCHARGING SCMs.** SCM(s) shall provide runoff treatment for the difference between the pre- and post-development runoff volumes for the one-year, 24-hour storm event and meet the following requirements:
- (i) documentation shall be provided that it is not feasible to meet the MDC for infiltrations systems as set forth in Rule .1051 of this Section;
  - (ii) the stormwater shall be filtered through a minimum of 18 inches of sand prior to discharge;
  - (iii) the discharge from the SCM shall be directed to either a level spreader-filter strip designed as set forth in Rule .1059 of this Section, a swale that fans out at natural grade, or a natural wetland that does not contain a conveyance to SA waters; and
  - (iv) the runoff volume in excess of the one-year, 24-hour storm event shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); S.L. 2008-211; S.L. 2017-211; Eff. January 1, 2017 (portions of this rule previously codified in 15A NCAC 02H .1005); Amended Eff. June 1, 2018.*

**15A NCAC 02H .1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM**

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with this Rule and the requirements of 15A NCAC 02B .0104(f). The Commission shall approve local ordinances if it determines that the requirements of the local ordinance meet or exceed the provisions of



this Rule and the requirements of 15A NCAC 02B .0104(f). A model ordinance for the USMP shall be available at no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-permits/usmp>. Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. Local governments located within one of the 20 Coastal Counties may elect to have the Division administer and implement the USMP, either in whole or in part, within their jurisdiction following their adoption of the program. The requirements of the USMP shall supersede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following post-construction stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));
- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));
- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1021);
- (8) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1021);
- (9) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1019);
- (10) Shellfishing Waters (SA) (15A NCAC 02H .1019);
- (11) Post-Construction Stormwater Requirements of the NPDES MS4Program (15A NCAC 02H .1017);
- (12) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1019;
- (13) Stormwater Management Plans for 401 Water Quality Certifications under 15A NCAC 02H .0500;
- (14) Catawba Buffer Rules (15A NCAC 02B .0243); and
- (15) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the certification process pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341) in order to ensure that the proposed activity will not violate water quality standards.

(d) Adoption of the USMP shall not affect the requirements specified in the following Rules:

- (1) 15A NCAC 02B .0214(3)(b)(i)(I);
- (2) 15A NCAC 02B .0214(3)(b)(ii)(C) and (D);
- (3) 15A NCAC 02B .0215(3)(b)(i)(I);
- (4) 15A NCAC 02B .0215(3)(b)(ii)(C) and (D); and
- (5) 15A NCAC 02B .0216(3)(b)(ii)(C) and (D).

(e) The Catawba Buffer Rules shall be superseded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program shall be replaced by the USMP. For the watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superseded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James.

(f) The implementation of the USMP shall supersede the Urban Stormwater Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed: Protection and Maintenance of Existing Riparian Buffers requirements specified in 15A NCAC 02B .0250.

(g) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale, shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (i) of this Rule. In addition, all impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent streams. In addition to the other requirements specified in this Paragraph, all development activities that are located within 575 feet of waters designated by the Commission as shellfishing waters shall be limited to a maximum impervious surface density of 36 percent. Redevelopment activities shall not be required to comply with the requirements of this Paragraph.

(h) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land, including residential development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land, including non-residential development that disturbs less than ½ acre of land that is part of a larger common plan of development or sale, shall control the runoff from the first one inch

of rainfall as specified in Paragraph (i) of this Rule. Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://www.ncfloodmaps.com/>. For perennial and intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all development activities subject to this Rule shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent streams. In addition to the other requirements specified in this Paragraph, all development activities that are located within the area designated by the Commission as a Critical Area of a Water Supply Watershed as defined in 15A NCAC 02B .0202 shall be limited to a maximum impervious surface density of 36 percent. Redevelopment of residential structures within the one percent Annual Chance Floodplain shall be allowed. Redevelopment of non-residential structures within the one percent Annual Chance Floodplain shall be allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the one percent Annual Chance Floodplain shall not be required to comply with the requirements of this Paragraph.

- (i) Structural stormwater controls required under Paragraphs (g) and (h) of this Rule shall meet the following criteria:
- (1) achieve either runoff treatment or runoff volume match in accordance with Paragraphs (g) and (h) of this Rule; and
    - (A) for SCMs designed to achieve runoff treatment, the required storm depth shall be one and one half inch in the Coastal Counties and one inch in the Non-Coastal Counties.
    - (B) applicants shall have the option to use SCMs designed to achieve "runoff volume match" in lieu of "runoff treatment" in accordance with the definitions of those terms in Rule .1002 of this Section; and
  - (2) meet the requirements for all projects subject to stormwater rules as set forth in Rule .1003 of this Section.
- (j) For the purposes of this Rule, a surface water shall be deemed present if the feature is shown on either the most recent published 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 the provisions of 15A NCAC 02B .0233(3)(a).
- (k) Local governments that implement the USMP shall require applicants to record deed restrictions and protective covenants that ensure that the project will be maintained in perpetuity consistent with approved plans.
- (l) Local governments that implement the USMP shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the USMP. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance inspection report on each structural stormwater control measure annually to the local program.
- (m) In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land within ½ mile and draining to SA waters shall:
- (1) use stormwater control measures that result in fecal coliform die-off and that control to the maximum extent practicable sources of fecal coliform while complying with Paragraph (i) of this Rule; and
  - (2) prohibit new direct points of stormwater discharge to SA waters or expansion of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin shall not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (n) In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use stormwater control measures that do not cause an increase in the receiving water temperature while still incorporating the requirements specified in Paragraph (i) of this Rule.
- (o) The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local program's deficiencies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall take the following action:

- (1) implement the requirements of 15A NCAC 02B .0243 and 15A NCAC 02H .1019, and .1021 in lieu of the local government's administration of the USMP in areas subject to those Rules; and
  - (2) enforce the requirements of 15A NCAC 02B .0214 through .0216, and .0251, and 15A NCAC 02H .0500 and .1017 in areas subject to those Rules.
- (p) Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the one percent Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the one percent Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated one percent Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five degrees or less.
- (q) The following special provisions of the USMP apply only to federal facilities and Department of Defense (DoD) installations. Federal facilities and DoD installations may adopt the USMP within their boundaries by submitting a letter to the Chairman of the Commission that states that the facility in question has adopted controls that comply with the requirements of this Rule and with the requirements of 15A NCAC 02B .0104(f). In lieu of the protective covenants and deed restrictions required in Paragraph (k) of this Rule, federal facilities and DoD installations that choose to adopt the USMP within their boundaries shall incorporate specific restrictions and conditions into base master plans or other appropriate instruments to ensure that development activities regulated under this Rule will be maintained in a manner consistent with the approved plans.
- (r) Implementation of this USMP does not affect any other rule or requirement not specifically cited in this Rule.

*History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a); 143-215.6A; 143-215.6B; 143-215.6C; Eff. January 1, 2007; Readopted Eff. January 1, 2017.

**15A NCAC 02H .1021 NON-COASTAL COUNTY HIGH QUALITY WATERS (HQW) AND OUTSTANDING RESOURCE WATERS (ORW)**

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of surface waters and to protect their designated best usages in management zones of Non-Coastal County High Quality Waters (HQW) and Outstanding Resource Waters (ORW).

- (1) **IMPLEMENTING AUTHORITY.** This rule shall be implemented by the Division.
- (2) **APPLICABILITY.** This Rule shall apply to development activities outside of Coastal Counties that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57 and are either:
  - (a) within one mile of and draining to waters classified as HQW except that development located in WS-I or WS-II watersheds as set forth in 15A NCAC 02B .0212 and .0214 are excluded from the requirements of this Rule; or
  - (b) draining to waters classified as ORW.
- (3) **EFFECTIVE DATE.** The effective date of prior Rules .1006 and .1007 of this Section is September 1, 1995.
- (4) **GENERAL REQUIREMENTS FOR NEW DEVELOPMENT.** In addition to the requirements of this Rule, projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) **PROJECT DENSITY.** A project shall be considered a low density project if meets the low density criteria set forth in Item (2) of Rule .1003 of this Section and contains no more than 12 percent built-upon area or no more than one dwelling unit per acre; otherwise, a project shall be considered high density. Low density projects shall comply with the requirements set forth in Item (2) of Rule .1003 of this Section. High density projects shall comply with the requirements set forth in Item (3) of Rule .1003 of this Section.
- (6) **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.
- (7) **VEGETATED SETBACKS.** Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 30 feet in width for both low and high density developments and shall comply with Rule .1003(4) of this Section.

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);

*Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1006 and .1007).*

**15A NCAC 02H .1022    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1023    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1024    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1025    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1026    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1027    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1028    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1029    RESERVED FOR FUTURE CODIFICATION**

**15A NCAC 02H .1030    STORMWATER REQUIREMENTS: OIL AND GAS EXPLORATION AND PRODUCTION**

(a) Regulated Development Activity. Persons engaged in oil and gas exploration, development, and production activities shall manage stormwater runoff in accordance with the provisions of this Rule.

- (1) These persons shall submit a permit application to the Division of Energy, Mineral, and Land Resources (Division) in accordance with the requirements of this Section.
- (2) These persons shall obtain a permit from the Division prior to any on-site activities other than land surveying, and surface soil testing of hydraulic conductivity and engineering properties.
- (3) This Rule authorizes the Division to issue a stormwater-only permit. Any other discharge to surface waters is prohibited unless permitted in accordance with G.S. 143-215.1.
- (4) The Division may issue stormwater permits as discrete, stand-alone stormwater permits or may incorporate stormwater permit conditions into an environmental protection permit encompassing multiple regulatory programs.

(b) Permit Application Requirements.

- (1) Notwithstanding the qualifying provisions of Rule .1003(b)(1), (2), and (3) of this Section, a complete permit application and a permit are required for oil and gas exploration, development, and production activity, regardless of whether the activity also requires a CAMA major development permit or an Erosion and Sedimentation Control Plan. A permit application and permit are also required regardless of whether the development is located in the 20 coastal counties, drains to Outstanding Resource Waters (ORW), or drains to High Quality Waters (HQW).
- (2) The Division shall treat each stormwater permit application for oil and gas exploration, development, and production activities as a High Density Project application as provided for in Rule .1003(d)(2) of this Section, and shall only grant permit coverage if the application itself and the proposed development meet the requirements of this Rule.
- (3) The Director may solicit and receive comments from other regulatory agencies and the public when necessary to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions in an application for an environmental protection permit encompassing multiple regulatory programs. If comments are solicited, notice will be posted on the Division's website with 30 days provided for public comment to be submitted to the Director. The permit application will be included in the notice published on the Division's website.
- (4) The permit application for oil and gas exploration, development, and production activities shall be submitted to the Division at the Raleigh Central Office located at 512 North Salisbury Street, Raleigh, North Carolina 27604.
- (5) The stormwater permit application shall comply with the requirements in Rule .1003(g) of this Section. In addition, the application shall include the following information:
  - (A) all North Carolina classifications and supplemental classifications (if any) assigned to the receiving water;

- (B) the location of all stormwater discharge points, both by latitude and longitude coordinates and by graphic representation;
  - (C) the graphic representation of the location and delineation of wetlands and regulated buffers on the site, adjacent to the site, or between the site and the receiving water;
  - (D) a statement that there are no threatened or endangered species identified for the receiving water or for downstream receiving waters. If threatened or endangered species are present the application shall identify the threatened and endangered species and their reported locations in the receiving water and downstream receiving waters. The application shall propose specific measures for the protection of any threatened or endangered species present in the receiving water. The Division shall evaluate the proposed measures and may require additional or different measures in the final form of the stormwater management permit;
  - (E) a design narrative that explains the assumptions and calculations for the engineering design of the stormwater control systems proposed and that identifies how the design complies with each specific requirement of this Section; and
  - (F) a graphic representation of the final site grade and site conditions that will be implemented in support of a future request to rescind the stormwater permit, or comprehensive environmental permit, based on the final close out and the end of the permit holder's commercial interest in the site.
- (6) As a part of the permit application, the applicant shall submit a Stormwater Management Plan that identifies the physical and procedural stormwater management measures proposed to minimize the discharge of pollutants through stormwater. The Stormwater Management Plan shall address all phases of site activity and operation. The Stormwater Management Plan shall include:
- (A) a description of site activities with the potential to affect the pollutant content of stormwater runoff;
  - (B) a description of the permittee's stormwater management strategy to control and minimize stormwater exposure of significant materials;
  - (C) a description of the permittee's spill prevention and response procedures;
  - (D) a description of the permittee's preparations in anticipation of, and in response to, rainfall events in excess of the design basis of the physical stormwater control and treatment measures employed;
  - (E) a description of good housekeeping measures and supporting facility inspections including a schedule of inspections and maintenance on any structural control measures;
  - (F) a description of the permittee's training of site personnel in stormwater pollution prevention; and
  - (G) the identification of the specific person or position responsible for the overall coordination, development, implementation, and revision of the Stormwater Management Plan.
- (c) Stormwater Management Requirements.
- (1) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage (control, operate, maintain, store, handle, clean up, and dispose of) site conditions, materials, activities, and stormwater as follows:
    - (A) Equipment, petroleum products, equipment wash waters, and associated spent fluids shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.
    - (B) Herbicides, pesticides, fertilizers, and similar materials shall be managed to prevent introduction into stormwater runoff.
    - (C) Building material waste, land clearing and demolition debris, litter, and sanitary wastes shall be managed to prevent introduction into stormwater runoff. Dedicated management areas shall be established for these materials a minimum of 50 feet away from surface waters and discrete stormwater conveyances.
    - (D) Topsoil and excavated material stockpiles shall be located a minimum of 50 feet away from surface waters and stormwater conveyances and shall be managed to prevent runoff transport of the stockpiled materials to surface waters.
    - (E) Excess concrete, concrete wash water, and cement slurries shall be managed to prevent the potential or actual pollution of surface waters by direct discharge or via stormwater runoff.

- (2) During initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, the permittee shall manage site conditions, materials, activities, and stormwater as follows:
- (A) All perimeter dikes, perimeter swales, perimeter ditches, perimeter slopes, all slopes steeper than 3:1, and all slopes longer than 50 feet shall be provided with temporary or permanent ground cover stabilization within 7 calendar days from the last land disturbing activity.
  - (B) All other disturbed areas shall be provided temporary or permanent ground cover stabilization within 14 calendar days from the last land disturbing activity.
  - (C) Time extensions may be requested in writing by the permittee. These requests may be granted by the Division based on weather or site-specific conditions.
  - (D) Treatment measure requirements:
    - (i) All sediment basins and traps with a contributing drainage area of one acre or greater shall utilize outlet structures that withdraw water from the surface.
    - (ii) Stormwater treated with polymers, flocculants, or other treatment chemicals shall be routed through sediment traps, filters, or other settling devices to ensure removal prior to discharge to surface waters. Only chemicals that have been approved by the Division may be used. The approved chemicals list is available on the Division's website at <http://portal.ncdenr.org/web/lr/construction-stormwater>.
- (3) For this Rule, 'spudding' the well means starting the oil or gas well drilling process by removing rock, dirt, and other sedimentary material with the drill bit. After initial site clearing, grading, excavation, and construction of earthen surface features, including temporary erosion and sedimentation control measures and permanent stormwater control measures, and at least 72 hours prior to spudding an oil or gas well, the permittee shall deliver to the Division written certification by the individual designing the stormwater control system in accordance with Rule .1008(j) of this Section. Regardless of whether a certificate of occupancy is provided or required by other authority, the permittee shall not proceed with spudding the well until the Division accepts the designer's written certification. Within 72 hours of receiving the designer's certificate the Division shall inspect the permitted stormwater control system. Subsequent to the inspection, the Division may withhold acceptance of the designer's certification upon concluding that the stormwater control system has not been installed in accordance with the stormwater permit and the approved stormwater permit application documents. If the Division fails to inspect the stormwater control system within 72 hours of receiving the designer's certification, the certification shall be deemed accepted by the Division and the permittee may proceed with spudding the well.
- (4) After completion of the surface site preparation activity, and beginning with the surface activity in direct support of well drilling, the permittee shall manage site conditions, materials, activities, and stormwater as follows:
- (A) Stormwater control measures shall control and treat the runoff from the rainfall event with a 24-hour precipitation total greater than or equal to 90 percent of all 24-hour rainfall event totals on an annual basis.
  - (B) Stormwater control measures shall discharge at a rate less than or equal to the peak pre-development discharge rate for the 1-year, 24-hour storm.
  - (C) Stormwater control measures shall be designed in accordance with the provisions of Rule .1008 of this Section.
  - (D) In addition to the measures identified in Rule .1008(a) of this Section, other measures shall be approved where individually, or in combination, the measures achieve 85% average annual removal of Total Suspended Solids, and upon the Division's review and conclusion of appropriate design and suitability for the anticipated site conditions.
  - (E) All stormwater control measures shall be equipped with underflow baffles or other effective means to prevent the discharge of hydrocarbons and floating pollutants.
  - (F) The requirements identified in Subparagraphs (1) and (2) of this Paragraph for initial site construction shall also apply to all subsequent phases of site operation.
- (5) The Division shall establish record-keeping, self-inspection, and self-reporting permit requirements to insure effective site management attention, response actions, and control of the potential for polluted stormwater.

- (6) Stormwater management requirements provided in this Paragraph pertain to the well pad area, all adjacent developed areas, and access and haul roads in proximity to the well pad or directly associated with the operation of the permitted site.
- (d) Coordination with other water quality regulations.
- (1) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the requirements of Rule .1006 of this Section. However, pursuant to Rule .1006 of this Section, the Division may require more stringent measures for development activities draining to HQW waters.
  - (2) For oil and gas exploration, development, and production activities, compliance with this Rule satisfies the Freshwater ORW requirements of Rule .1007 of this Section. However, pursuant to Rule .1007 of this Section, the Division may require more stringent measures for development activities draining to ORW waters.
  - (3) This Rule is not intended to modify, repeal, or supersede any other rule, regulation, or other provision of law. The requirements of this Rule are in addition to the requirements of any other rule, regulation, or other provision of law. Where any requirement of this Rule imposes restrictions different from those imposed by any other rule, regulation, or other provision of law, whichever requirement is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control. This includes Sections 15A NCAC 02B .0100, 15A NCAC 02B .0200, and 15A NCAC 02B .0300, whether administered by the State or by a local unit of government.

*History Note:* Authority G.S. 113-391(a3)(1); 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); S.L. 2014-4 s. 2.(e); Eff. March 17, 2015.

#### **15A NCAC 02H .1040 PERMIT ADMINISTRATION**

This Rule applies to the permitting processes set forth in Rules .1041 through .1045 of this Section.

- (1) **SIGNATURES ON PERMIT APPLICATION FORMS.** Application forms shall have an original signature by one of the following entities unless the application is accompanied by a letter of authorization signed by the appropriate authority as designated in Sub-Items (a) through (d) of this Item authorizing the signature of another entity:
  - (a) in the case of a corporation, by a principal executive officer of the level of vice-president or his authorized representative. In the case of a limited liability corporation (LLC), by a manager or company official as those terms are defined in G.S. 57D "North Carolina Limited Liability Company Act;"
  - (b) in the case of a partnership, by a general partner or a managing partner. In the case of a limited partnership, by a general partner;
  - (c) in the case of a proprietorship, by the proprietor(s); or
  - (d) in the case of a municipal, state, or other public entity, by either a principal executive officer, ranking official, or other duly authorized employee.
- (2) **PERMIT PROCESSING TIMES.** The Division shall process permit applications and additional or amended information pursuant to G.S. 143-215.1.
- (3) **DELEGATION.** For permits issued by the Division, the Director shall be authorized to delegate to Division staff any of the functions contained in these Rules, except the following:
  - (a) denying a permit application;
  - (b) revoking a permit if such revocation is not requested by the permittee;
  - (c) modifying a permit not requested by the permittee; and
  - (d) calling for a public notice or meeting.
- (4) **PERMIT ISSUANCE.** The following shall apply to stormwater management permits issued by the Division:
  - (a) stormwater management permits issued for low density projects shall not require permit renewal;
  - (b) stormwater management permits issued for projects that require the construction of engineered stormwater control measures shall be issued for a period not to exceed 8 years; and
  - (c) stormwater management permits shall be issued to the property owner or to a lessee, purchaser, or developer with the written permission of the property owner, and shall cover the entire project.
- (5) **PERMIT DENIAL.** If the Director denies a permit, the letter of denial shall state the reason(s) for denial and the Director's estimate of the changes in the applicant's proposed activities or plans that would be

required in order that the applicant may obtain a permit. Permit applications may be denied where the proposed project results in noncompliance with:

- (a) the purposes of G.S. 143, Article 21;
  - (b) the purposes of G.S. 143-215.67(a);
  - (c) rules governing coastal waste treatment or disposal, found in Section .0400 of this Subchapter;
  - (d) rules governing "subsurface disposal systems," found in 15A NCAC 18A .1900. Copies of these Rules are available from the North Carolina Division of Public Health, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632; or
  - (e) rules governing groundwater quality standards found in Subchapter 2L of this Chapter.
- (6) **PERMIT REVOCATION OR MODIFICATION.** Permits issued pursuant to these Rules are subject to revocation, or modification by the Director upon 60 days' written notice by the Director in whole or in part for good cause including the following:
- (a) violation of any terms or conditions of the permit;
  - (b) obtaining a permit by misrepresentation or failure to disclose all relevant facts; or
  - (c) refusal of the permittee to allow authorized employees of the Department of Environmental Quality, upon presentation of credentials:
    - (i) to enter upon permittee's premises in which any records are required to be kept under terms and conditions of the permit;
    - (ii) to have access to any and all records required to be kept under terms and conditions of the permit;
    - (iii) to inspect any monitoring equipment or method required in the permit; or
    - (iv) to sample any discharge of pollutants.
- (7) **DIRECTOR'S CERTIFICATION.** With the exception of the fast track permitting as set forth in Rules .1043 and .1044 of this Section, projects that do not comply with the requirements of this Section may be approved on a case-by-case basis if the project is certified by the Director that water quality standards and best usages will not be threatened. Approval of alternative designs for SCMs that do not meet all the MDC shall be in accordance with Rule .1003(6) of this Section. Approval of new stormwater technologies shall be in accordance with Rule .1050(15) of this Section. The applicant shall provide information that demonstrates to the Director that:
- (a) there are practical difficulties or hardships due to the physical nature of the project such as its size, shape, or topography that prevent strict compliance with this Section; and
  - (b) water quality standards and best usages will be protected, including development plans and specifications for SCMs that will be installed in lieu of the requirements of this Section or information that demonstrates that the project is located such that impacts to surface waters from pollutants present in stormwater from the site will be mitigated.
- (8) **PUBLIC NOTICE.** The Director is authorized to call for a public notice or hearing to solicit and receive comments from other regulatory agencies and the public to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions. If comments are solicited, notice shall be posted on the Division's website and shall provide the public at least 30 days after publication to submit comments to the Director. The permit application shall be included in the notice published on the Division's website.
- (9) **CONTESTED CASE HEARING.** An applicant whose application is denied or who is issued a permit subject to conditions that are not acceptable to the applicant may seek a contested case hearing pursuant to G.S. 150B-23.
- (10) **COMPLIANCE.** Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of this Section shall be subject to enforcement procedures as set forth in G.S. 143, Article 21.

*History Note:* Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 143-215.3D; 143-215.6A; 143-215.6B; 143-215.6C;  
Eff. January 1, 2017 (portions of this rule previously codified in 15A NCAC 02H .1003, .1010, .1011, and .1012).



(a) In accordance with the provisions of G.S. 143-215.1(b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities covered in this Section. Each of the general permits shall be issued separately pursuant to G.S. 143-215.1, using all procedural requirements specified for State permits including application and public notice.

(b) General permits may be written to regulate categories of activities that:

- (1) involve the same or similar operations;
- (2) have similar characteristics;
- (3) require the same limitations or operating conditions;
- (4) require the same or similar monitoring; and
- (5) are controlled by a general permit as determined by the Director.

(c) General permit coverage shall be available to activities, such as the following:

- (1) construction of bulkheads and boat ramps;
- (2) installation of sewer lines with no proposed built-upon areas;
- (3) construction of an individual single family residence; and
- (4) other activities that, as determined by the Director, meet the criteria of Paragraph (b) of this Rule.

(d) General permits may be modified or revoked in accordance with the authority and requirements of Rule .1040 of this Section.

(e) Procedural requirements for application and permit approval, unless designated as applicable to persons proposed to be covered under the general permits, apply only to the issuance of the general permits.

(f) After issuance of the general permit by the Director, persons engaged in activities in the applicable categories may request coverage under the general permit, and if an activity falls within a category of activities governed by the general permit the Director or his designee shall grant coverage. All activities that receive a "Certificate of Coverage" for that category of activity shall be deemed governed by that general permit.

(g) No provision in any general permit issued under this Rule shall be interpreted to allow the permittee to violate state water quality standards or other applicable environmental standards.

(h) For a general permit to apply to an activity, a Notice of Intent to be covered by the general permit shall be submitted to the Division using forms provided by the Division on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> . In addition to the application procedures set forth in Rules .1040 and .1042 of this Section, the Notice of Intent shall include the following:

- (1) project name and physical location;
- (2) receiving stream name and classification;
- (3) total project area above mean high water;
- (4) total amount of proposed built-upon area;
- (5) description of best management practices employed at the project site;
- (6) two sets of site and grading plans; if applicable, plans shall show wetland delineation and the "AEC" line as established by the North Carolina Coastal Resources Commission pursuant to Sections .0100 15A NCAC 07H .0100 - .0600; and
- (7) location of the project indicated on a U.S. Geological Survey (USGS) map.

If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, or the Director determines the activity is not governed by the general permit, then the applicant shall be notified in writing and may apply for an individual permit pursuant to this Section.

(i) General permits may be modified and reissued by the Division as necessary. Activities covered under general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(j) All previous state water quality permits issued to a facility that may be covered by a general permit, whether for construction or operation, shall be revoked upon request of the permittee, termination of the individual permit, and issuance of the Certification of Coverage.

(k) Any person engaged in the activities set forth in G.S. 143-215.1 and not permitted in accordance with this Section shall be in violation in G.S. 143-215.1.

(l) Any person covered or considering coverage under a general permit may choose to pursue an individual permit for any activity covered by this Section.

(m) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an individual permit application is required. Notification shall consist of a written

description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit include:

- (1) the activity is a significant contributor of pollutants;
- (2) a change in the conditions at the permitted site, altering the constituents or characteristics of the site such that the activity no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with other provisions of G.S. 143-215.1;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the activity; or
- (6) a determination that the water of the stream receiving stormwater runoff from the site is not meeting applicable water quality standards.

(n) Any interested person may petition the Director to take an action under Paragraph (m) of this Rule to require an individual permit. A petition shall be submitted in writing by mail or email to the Director.

*History Note: Authority G.S. 143-215.1; 143-215.3(a);143-215.3D;  
Eff. January 1, 2017 (previously codified in 15A NCAC 02H .1013).*

#### **15A NCAC 02H .1042 STANDARD PERMITTING PROCESS**

This Rule contains the requirements for the application, review, issuance, and denial of state stormwater management permits under the standard permitting process.

- (1) **APPLICABILITY.** This rule applies to:
  - (a) any person seeking to permit a development activity subject to a stormwater program implemented by the Division under the standard permitting process; and
  - (b) any person proposing a major modification to an existing state stormwater permit under the standard permitting process.
- (2) **APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a nonrefundable permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
  - (a) a completed and signed Standard Process Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
    - (i) current project name and previous project name, if applicable;
    - (ii) information about the physical location of project;
    - (iii) stormwater project number, if assigned;
    - (iv) density of the entire project and each drainage area;
    - (v) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Erosion and Sedimentation Control Plans, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;
    - (vi) description of SCMs that will be used on the project;
    - (vi) information about vested rights, if applicable;
    - (vii) applicant name, address, and contact information; and
    - (ix) owner name, address, and contact information.
  - (b) when the applicant is a corporation or limited liability corporation (LLC):
    - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
    - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the person who signed the application pursuant to Rule .1040(1) of this Section;
  - (c) when the applicant is not the property owner, a copy of a lease agreement, affidavit, or other document showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;

- (d) a U.S. Geological Survey (USGS) map identifying the project location and the GPS coordinates for the project. Areas within the project that are subject to SA Waters, Outstanding Resource Waters (ORW), or High Quality Waters (HQW) stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;
- (e) a location map with street names and SR numbers to the nearest intersection, with 1, 2, or 3 digit road numbers, legend, and north arrow. This map is not required to be to scale;
- (f) signed, sealed, and dated calculations and documentation of project density and allocation of built-upon area for all lots at project completion;
- (g) signed, sealed, and dated plans of the entire site that are a minimum of 22 inches by 34 inches in size and are at a legible scale. All plan packages shall include:
  - (i) project name, designer, and dates;
  - (ii) dimensioned project or project phase boundary with bearings and distances;
  - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers, or a note on the plans that none exist;
  - (iv) proposed contours and drainage patterns;
  - (v) site layout showing all existing and proposed built-upon areas, except for built-upon areas associated with single family residential lots and outparcels on commercial developments that are undetermined at the time of project submittal;
  - (vi) subdivision lot lines, maintenance access routes and easements, utility and drainage easements, public rights of way, and SCMs; and
  - (vii) the location of the stormwater collection system, including the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts.

The Division shall accept conceptual stormwater plans in lieu of this Sub-Item when the applicant can demonstrate that the project complies with this Section, including that SCMs will be properly sized and sited. The detailed plans shall be provided to the Division for review before construction begins;

- (h) signed, sealed, and dated plan details of each SCM in plan view at a scale of one inch equal to 30 feet or larger and a cross-section view. Other scales may be accepted if the scale is such that all details are legible on a copy. The plan details shall include:
  - (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;
  - (ii) all conveyance devices, including inlet device, bypass structure, pretreatment area, flow distribution device, underdrains, outlet device, energy dissipater, and level spreader; and
  - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate;
- (i) signed, sealed, and dated planting plans for each SCM that requires a planting plan per the Minimum Design Criteria. The planting plan shall include:
  - (i) plant layout with species names and locations;
  - (ii) total number and sizes of all plant species; and
  - (iii) for stormwater wetlands, a delineation of planting zones;
- (j) a signed and notarized operation and maintenance agreement;
- (k) for major modifications, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the BUA thresholds. For new projects, proposed deed restrictions and protective covenants. A signed agreement to provide final recorded articles shall be accepted when final documents are not available at the time of submittal; and
- (l) for major modifications, a copy of the recorded drainage easements, when applicable. For new projects, proposed drainage easements shown on the plans, and a signed agreement to provide final recorded drainage easements if recorded documents are not available at the time of submittal; and
- (m) wherever this Item requires sealed documents, a seal shall not be required if the person designing an SCM or components of an SCM is not required to be licensed as provided in Rule .1050 of this Section.

(3) DIVISION REVIEW OF APPLICATIONS.

- (a) The Division shall take one of the following actions:

- (i) notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information that is required. The applicant shall have 30 days from the date the letter was sent to submit the additional information to the Division;
- (ii) return the application if the required information listed in Item (2) of this Rule is not provided or if information the Division has requested per Sub-Item (i) of this Sub-Item is not provided within 30 days. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit a complete application with a new application fee;
- (iii) issue a permit pursuant to Rule .1040 of this Section; or
- (iv) deny a permit pursuant to Rule .1040 of this Section.
- (b) The Division shall require an applicant to submit plans, specifications, and other information it considers necessary to evaluate the application when the information provided is inadequate or incorrect. The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant.
- (c) If the Division fails to act within the required response times set forth in G.S. 143-215.1, then the application shall be considered approved unless:
  - (i) the applicant agrees, in writing, to a longer period;
  - (ii) a final decision is to be made pursuant to a public hearing;
  - (iii) the applicant fails to furnish information necessary for the Division's decision in accordance with Item (2) or Sub-item (3)(a) of this Rule; or
  - (iv) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.
- (4) **FINAL SUBMITTAL REQUIREMENTS IF COMPLETED PROJECT COMPLIES WITH PERMITTED PLANS.** If the actual built-upon area is equal to or less than that shown on the permitted plans and the constructed SCM is in compliance with the approved plans, then within 45 days of completion of the project the applicant shall submit to the Division one hard copy and one electronic copy of the following:
  - (a) a completed and signed Designer's Certification Form. This form may be obtained on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
    - (i) designer name and licensure number;
    - (ii) project name;
    - (iii) project owner name; and
    - (iv) information about deviations from approved plans and specifications;
  - (b) unless already provided with the permit application, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds; and
  - (c) a copy of the recorded drainage easements, when applicable.
- (5) **IF PROJECT DOES NOT COMPLY WITH PERMITTED PLANS.** If the actual built-upon area exceeds that shown on the permitted plans or if the constructed SCM is not in compliance with the approved plans, then within 30 days of completion of the project, the applicant shall submit an application for a modified stormwater permit in accordance with the requirements of this Rule. On a case-by-case basis, based on the project's size and complexity, the Division may grant the applicant more time to submit the modification application.

*History Note:* Authority G.S. 143-214.7; 143-215.1; 143-215.3; 143-215.3(a); 143-215.3D; Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1008, 1009, and .1010).

#### **15A NCAC 02H .1043 FAST TRACK PERMITTING PROCESS: AUTHORIZATION TO CONSTRUCT**

The purpose of this Rule is to set forth the first of two phases of the Fast-Track Stormwater Permit application process: applying for and receiving an authorization to construct permit. There will be a completeness review during the first phase of this process; however, at project completion, the Division shall review the as-built submittal package to determine compliance with the Minimum Design Criteria (MDC).

- (1) **APPLICABILITY.** The fast-track permitting process shall be an option for new projects and major modifications of existing projects provided that all of the MDC shall be met upon project completion. Projects that do not qualify for the fast-track permitting process include:
  - (a) projects claiming an exemption from the MDC based on vested rights, a waiver, or Director's certification pursuant to Rule .1040(7) of this Section;
  - (b) modifications to existing projects where the proposed changes to the SCMs will not result in compliance with MDC; and
  - (c) projects that are not in compliance with a current stormwater permit.
- (2) **ELIGIBILITY FOR FAST-TRACK SUBMITTAL.** Persons seeking authorization to construct under the fast-track permitting process shall submit an application bearing the signature and seal of a person licensed pursuant to either Chapter 89A or Chapter 89C of the NC General Statutes. The signature and seal of such persons on the fast-track application shall signify that they have the expertise, education, and experience required to design the SCMs proposed in the application in accordance with the MDC and that they are in compliance with the applicable standards of professional conduct.
- (3) **APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
  - (a) a completed and signed Fast-Track Process Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
    - (i) current project name and previous project name, if applicable;
    - (ii) information about the physical location of project;
    - (iii) stormwater project number, if assigned;
    - (iv) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Erosion and Sedimentation Control Plans, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;
    - (v) applicant name, address, and contact information;
    - (vi) owner name, address, and contact information; and
    - (vii) certification of financially responsible owner.
  - (b) when the applicant is a corporation or a limited liability corporation (LLC):
    - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
    - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the persons signed the application pursuant to Rule .1040(1) of this Section;
  - (c) when the applicant is not the property owner, a copy of lease agreements, affidavits, or other documents showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;
  - (d) a guaranty signed and notarized by the applicant and sealed by the licensed professional in accordance with Item (2) of this Rule attesting to the following:
    - (i) the design has been completed in accordance with the MDC as set forth in Rules .1050 through .1062 of this Section, as applicable.
    - (ii) the completed design meets the MDC and that the percentage built-upon area that is the basis for the design shall not be exceeded; and
    - (iii) the applicant shall maintain a licensed professional of record for the duration of the project who will prepare and certify the as-built package. If the applicant retains another licensed professional before the project is complete, then the applicant shall provide an updated guaranty with the current licensed professional's seal. A licensed professional shall inform the Division if he is no longer associated with this project;
  - (e) a U.S. Geological Survey (USGS) map identifying the project location and the GPS coordinates for the project. Areas within the project that are subject to SA Waters, Outstanding Resource Waters (ORW) or High Quality Waters (HQW) stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;

- (f) a site plan depicting the boundary of the project or project phase currently being permitted, including the locations of stormwater control measures, streams, wetlands, and buffers; and
  - (g) a construction sequence that discusses how any future development on the project may be phased.
- (4) **DIVISION REVIEW OF APPLICATIONS.** The Division shall take one of the following actions within 30 days of the receipt of the application:
- (a) Notify the applicant that the project does not qualify for the fast track permitting process pursuant to Item (1) of this Rule. The applicant shall then follow the standard permitting process in accordance with Rule .1042 of this Section;
  - (b) Notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 days to submit the additional information to the Division;
  - (c) Return the application if the required information listed in Item (3) of this Rule is not provided or if information the Division has requested per Sub-item (4)(b) of this Rule is not provided within 30 days. In this case, the applicant shall be required to resubmit a complete application with a new application fee; or
  - (d) Issue an authorization to construct permit; or
  - (e) Deny the application in accordance with Rule .1040 of this Section.
- (5) **EXPIRATION OF THE AUTHORIZATION TO CONSTRUCT PERMIT.** The authorization to construct permit shall expire five years after the date of issuance.

*History Note:* Authority G.S. 143.214.7; 143-214.7B; 143-215.1; 143-215.3(a); S.L. 2013-82; Eff. January 1, 2017.

#### **15A NCAC 02H .1044 FAST TRACK PERMITTING PROCESS: FINAL PERMIT**

The purpose of this Rule is to set forth the Fast-Track Stormwater permitting process from the approval of the Authorization to Construct Permit to the approval of the Final Fast-Track Permit.

- (1) **CONSTRUCTION REQUIREMENTS.** Technical design documents shall be available upon request by the Division.
- (2) **PROJECT COMPLETION.** Approval of the as-built stormwater plans shall be required before the Erosion and Sedimentation Control Plan for the project may be closed out.
- (3) **AS-BUILT PACKAGE SUBMITTAL.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and an as-built package within 45 days of completion of the project. Signed and sealed documents shall be signed and sealed in accordance with Rule .1043(2) of this Section. The as-built package shall include the following:
  - (a) an As-Built Certification Form signed and sealed by the licensed professional of record and signed by the applicant. The As-Built Certification Form may be obtained on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and shall include the following information:
    - (i) current project name and previous project name, if applicable;
    - (ii) information about the physical location of project;
    - (iii) stormwater project number, if assigned;
    - (iv) density of the entire project and each drainage area;
    - (v) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 401 of the Clean Water Act (33 U.S.C. 1341) permits;
    - (vi) description of SCMs that were used on the project;
    - (vii) applicant name, address, and contact information; and
    - (viii) owner name, address, and contact information.
  - (b) signed, sealed, and dated as-built calculations for the SCMs and calculations of the project density;
  - (c) when an SCM that has an MDC requiring evaluation of the SHWT or the soil infiltration rate, the applicant shall include the signed, sealed, and dated soils report based on field evaluation indicating the depth of SHWT within the footprint of the SCM, and a map of the boring locations, and boring logs. When the MDC require determination of the infiltration rate, the report shall

- include the soil type, infiltration rate, and method for determining the infiltration rate. Soils reports shall be signed and sealed by a licensed professional;
- (d) a location map with street names and SR numbers to the nearest intersection with 1, 2, or 3 digit road numbers, legend, and north arrow. This is not required to be to scale;
  - (e) signed, sealed, and dated plans of the entire site that are a minimum 22 by 34 inch in size and are at a legible scale. All plan packages shall include:
    - (i) project name, designer, and dates;
    - (ii) dimensioned project or project phase boundary with bearings and distances;
    - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers or a note on the plans that none exist; and
    - (iv) site layout showing all built-upon areas, maintenance access routes and easements, utility easements, drainage easements, public rights of way, stormwater collection systems, and SCMs at ultimate build-out. The information on stormwater collection systems shall include the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts;
  - (f) signed, sealed, and dated as-built plan details of each SCM in both plan view at a scale of one inch equal to 30 feet or larger and cross-section. Other scales may be accepted if the scale is such that all details are legible on a copy. The as-built plan details shall include:
    - (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;
    - (ii) all conveyance devices, including inlet devices, bypass structures, pretreatment areas, flow distribution devices, underdrain discharge points (if accessible), outlet devices, energy dissipater, and level spreader; and
    - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate.
  - (g) signed, sealed, and dated as-built planting plans for each stormwater wetland and bioretention cell (or typical) at a scale of one inch equals 20 feet or larger. The planting plan shall include:
    - (i) plant layout with species names and locations;
    - (ii) total number and sizes of all plant species; and
    - (iii) for stormwater wetlands, a delineation of planting zones;
  - (h) a copy of the signed, notarized, and recorded operation and maintenance agreement;
  - (i) a copy of the recorded documents, deed restrictions, and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds;
  - (j) a copy of the recorded drainage easements; and
  - (k) if there is an increase in built-upon area or a change in SCM design from the permitted plans, then the applicant shall explain the increase or change. The permit applicant shall have the burden of providing sufficient evidence to ensure that the proposed system complies with all applicable water quality standards and requirements.
- (4) **SITE INSPECTION.** The Division may perform a site inspection of the project to ensure that the as-built drawings are an accurate depiction of the stormwater management plan. The Division may inspect the site either:
- (a) before the final stormwater permit is issued by scheduling an inspection with the applicant. If the applicant does not agree to the inspection date selected by the Division, then the Division shall work with the applicant to schedule another inspection date; however, in this case, the Division's deadline for action shall be modified pursuant to Item (5) of this Rule; or
  - (b) after issuance of the final stormwater permit as part of the sediment and erosion control plan close-out.
- (5) **DIVISION REVIEW OF THE AS-BUILT PACKAGE.** Within 15 days after receipt of the as-built package or of additional or amended information, the Division shall notify the applicant if additional information is necessary to determine compliance with this Section. The applicant shall have 30 days from the date of such notice to submit the required information to the Division. If the as-built package is complete, then within 40 days after receipt of the as-built package or 30 days after completion of a site inspection that has been rescheduled at the request of the applicant, whichever date is later, the Division shall take any of the following actions:
- (a) issue the final permit pursuant to Rule .1040 of this Section;

- (b) draft a permit with special conditions in accordance with Item (6) of this Rule;
  - (c) initiate compliance and enforcement action in accordance with G.S. 143, Article 21; or
  - (d) deny the permit pursuant to Rule .1040 of this Section.
- (6) **PERMIT WITH SPECIAL CONDITIONS.** If the Division determines that the stormwater plan has only minor deviations from the MDC, then it shall draft a permit with special conditions to bring the project into compliance with the MDC. The Division shall provide the applicant with a draft of the proposed permit and the applicant shall have 10 days to submit comments or concerns back to the Division. After the draft permit is reviewed by the applicant, the Division shall issue a final permit with special conditions that includes the following:
- (a) a list of corrections to be made to the stormwater plan to bring the project into compliance with the MDC; and
  - (b) a proposed schedule of compliance for meeting the MDC.
- (7) **COMPLIANCE.** Applicants who fail to comply with the requirements of this Rule may be subject to enforcement action as set forth in G.S. 143-215.3.
- (8) **EXCEPTIONS TO ABOVE TIMEFRAMES.** If the Division fails to act within the timelines specified in Item (5) of this Rule, the project shall be considered to be approved unless:
- (a) the applicant does not agree to the inspection date proposed by the Division pursuant to Sub-item (4)(a) of this Rule.
  - (b) the applicant agrees, in writing, to a longer period;
  - (c) the final decision is to be made pursuant to a public notice or hearing;
  - (d) the applicant fails to furnish information necessary for the Division's as set forth in Items (3) and (5) of this Rule; or
  - (e) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

*History Note:* Authority 143.214.7; 143-214.7B; 143-215.1; 143-215.3; 143-215.3(a); 143-215.6A; 143-215.6B; 143-215.6C; S.L. 2013-82; Eff. January 1, 2017.

#### **15A NCAC 02H .1045 REQUIREMENTS FOR PERMIT TRANSFERS AND PERMIT RENEWALS**

This Rule contains the requirements for the transfer and renewal of State stormwater management permits that have been issued by the Division, including those issued under the standard and fast-track permitting processes.

- (1) **CONDITIONS UNDER WHICH A PERMIT SHALL BE TRANSFERRED.** Permit transfer applications shall be accepted by the Division under the following scenarios:
- (a) upon the request of the current and proposed permittees;
  - (b) upon the request of a permitted declarant of a condominium or planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration in accordance with G.S. 143-214.7(c2); or
  - (c) upon the request for a transfer without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in G.S. 143-214.7(c5).
- (2) **PERMIT TRANSFER APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
- (a) a completed and signed Permit Transfer Application Form. This form may be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
    - (i) current stormwater permit number;
    - (ii) current project name;
    - (iii) current permittee name and contact information; and
    - (iv) proposed permittee name and contact information.
  - (b) when the applicant is a corporation or limited liability corporation (LLC):
    - (i) Documentation showing the corporation or LLC for the proposed permittee is an active corporation in good standing with the NC Secretary of State; and



- (ii) Documentation from the NC Secretary of State or other official documentation, showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section;
  - (c) legal documentation of the property transfer to a new owner;
  - (d) a copy of a signed and notarized operation and maintenance agreement from the proposed permittee;
  - (e) a copy of the recorded deed restrictions and protective covenants where required by the permit. If the project has been built, documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded. If the project has not been built, the new owner shall provide a signed agreement to submit final recorded deed restrictions and protective covenants; and
  - (f) if the project has been built, a signed, sealed, and dated letter from a licensed professional or other qualified person in accordance with Rule .1050 of this Section stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans.
- (3) **PERMIT RENEWAL APPLICATION SUBMITTAL REQUIREMENTS.** Permittees shall submit a permit renewal application to the Division a minimum of 180 days prior to the permit's expiration date. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two signed hard copies and one electronic copy of each of the following:
  - (a) a completed and signed Permit Renewal Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
    - (i) project name and stormwater permit number;
    - (ii) permittee name and contact information;
    - (iii) owner name, title, and contact information;
    - (iv) information about the physical location of project;
    - (v) description of SCMs used on the project; and
    - (vi) if applicable, description of any changes made to the project as permitted.
  - (b) when the applicant is a corporation or limited liability corporation (LLC):
    - (i) Documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
    - (ii) Documentation from the NC Secretary of State or other official documentation, showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section.
  - (c) documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded;
  - (d) a signed, sealed, and dated letter from a licensed professional or other qualified person in accordance with Rule .1050 of this Section stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans;
  - (e) a copy of the current signed and notarized operation and maintenance agreement where required by the permit;
  - (f) a copy of the recorded deed restrictions and protective covenants, where required by permit; and
  - (g) if the project is out of compliance with permit conditions, a written schedule of actions to bring the project into compliance.
- (4) **DIVISION REVIEW OF APPLICATIONS.** The Division shall follow these procedures in reviewing and approving applications for permit transfers and renewals.
  - (a) The Division shall take one of the following actions upon receipt of the application:
    - (i) notify the applicant that the application is incomplete, and specify the additional information required as set forth in Items (2) or (3) of this Rule for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 days from the date the letter was sent to submit the additional information to the Division;
    - (ii) return the application if the required information listed in Items (2) or (3) of this Rule is not provided or if information the Division has requested per Sub-item (4)(a)(i) is not

- provided. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit a complete application with a new application fee; or
- (iii) issue an updated permit in accordance with this Section if the application is complete and the project is in compliance with its permit conditions and approved plans.
- (b) The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant. The Division may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Division considers necessary to evaluate the application.
  - (c) If the Division fails to act within the response times set forth by G.S. 143-215.1, then the application shall be considered approved unless:
    - (i) the applicant agrees, in writing, to a longer period;
    - (ii) the project being transferred or renewed is out of compliance with the stormwater permit;
    - (iii) a public notice or public hearing is required by the Director;
    - (iv) the applicant fails to furnish information necessary for the Division's decision in accordance with this Rule; or
    - (v) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017 (portions of this Rule previously codified in 15A NCAC 02H .1003).*

#### **15A NCAC 02H .1050 MDC FOR ALL STORMWATER CONTROL MEASURES**

The purpose of this Rule is to set forth the design requirements for all Stormwater Control Measures (SCMs) that are constructed to meet the requirements of this Section. These Minimum Design Criteria (MDC) are required for every SCM. SCMs shall adhere to the MDC associated with the specific type of SCM being implemented.

- (1) **SIZING.** The design volume of SCMs shall take into account the runoff at build out from all surfaces draining to the system. Drainage from off-site areas may be bypassed. The combined design volume of all SCMs on the project shall be sufficient to handle the required storm depth.
- (2) **CONTAMINATED SOILS.** SCMs that allow stormwater to infiltrate shall not be located on or in areas with contaminated soils.
- (3) **SIDE SLOPES.** Side slopes of SCMs stabilized with vegetated cover shall be no steeper than 3:1 (horizontal to vertical). Retaining walls, gabion walls, and other engineered surfaces may be steeper than 3:1. Steeper vegetated slopes may be accepted on a case-by-case basis if the applicant demonstrates that the soils and vegetation shall remain stable.
- (4) **EROSION PROTECTION.** The inlets of SCMs shall be designed to protect the SCM from erosion resulting from stormwater discharges. The outlets of SCMs shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (5) **EXCESS FLOWS.** SCMs shall include an overflow or bypass device for inflow volumes in excess of the treatment volume, or, if applicable, the peak attenuation volume.
- (6) **DEWATERING.** SCMs shall have a method to draw down any standing water to facilitate maintenance and inspection.
- (7) **CLEAN OUT AFTER CONSTRUCTION.** Every SCM impacted by sedimentation and erosion control during the construction phase shall be cleaned out and converted to its approved design state.
- (8) **MAINTENANCE ACCESS.** Every SCM installed pursuant to this Section shall be made accessible for maintenance and repair. Maintenance accesses shall:
  - (a) have a minimum width of ten feet;
  - (b) not include lateral or incline slopes that exceed 3:1 (horizontal to vertical); and
  - (c) extend to the nearest public right-of-way.
- (9) **EASEMENTS.** All SCMs and associated maintenance accesses on privately owned land except for those located on single family residential lots shall be located in permanent recorded easements. The SCM shall be shown and labeled within the easement. These easements shall be granted in favor of the party responsible for enforcing the stormwater program under which the SCMs were approved.
- (10) **SINGLE FAMILY RESIDENTIAL LOTS.** Plats for residential lots that contain an SCM shall include:

- (a) the specific location of the SCM on the lot;
  - (b) a typical detail for SCM to be used; and
  - (c) a note that the SCM on the property has been required to meet stormwater regulations and that the property owner may be subject to enforcement procedures as set forth in G.S. 143, Article 21 if the SCM is removed, relocated, or altered without prior approval.
- (11) OPERATION AND MAINTENANCE AGREEMENT. The owner of the SCMs shall enter into a Operation and Maintenance (O&M) Agreement with the party responsible for implementing the stormwater program under which the SCMs were approved. The O&M Agreement shall require the owner to maintain, repair, or reconstruct the SCMs in accordance with the approved design plans and the O&M Plan. The O&M Agreement shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the O&M Agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers.
  - (12) OPERATION AND MAINTENANCE PLAN. There shall be an O&M Plan for every project subject to this Rule. The O&M Plan shall specify all operation and maintenance work necessary for the function of all SCM components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point. The O&M plan shall specify methods to be used to maintain or restore the SCMs to design specifications in the event of failure. O&M plans shall be signed by the owner and notarized. The owner shall keep maintenance records and these shall be available upon request by the party responsible for enforcing the stormwater program under which the SCMs were approved.
  - (13) SCM SPECIFIC MINIMUM DESIGN CRITERIA (MDC). Every SCM shall follow the applicable device specific MDC pursuant to Rules .1051 through .1062 of this Section.
  - (14) SCM DESIGNER QUALIFICATIONS FOR THE FAST-TRACK PERMITTING PROCESS. For the fast-track permitting process as set forth in Rules .1043 and .1044 of this Section, SCMs and components of SCMs shall be designed by persons licensed under Chapters 89A, 89C, 89E, or 89F of the General Statutes.
  - (15) NEW STORMWATER TECHNOLOGIES. Applicants shall have the option to request Division approval of new stormwater technologies and associated MDC. The applicant shall submit to the Division the standards for siting, site preparation, design, construction, and maintenance of the stormwater technology as well as research studies demonstrating that the stormwater technology functions in perpetuity and is equally or more protective of water quality than the requirements of this Section. In accordance with G.S. 143-215.1 and 143-215.3, the Commission may delegate the review and approval of new stormwater technologies to Division staff and the Commission or its designee may request additional information deemed necessary to evaluate the stormwater technology. If the Commission or its designee deems that the applicant has demonstrated that the new stormwater technology shall be the same or more protective than the requirements of this Section, then the Division shall approve the use of the new stormwater technology to satisfy the requirements of this Section.
  - (16) NO EXCEPTIONS TO UNAUTHORIZED PROFESSIONAL PRACTICE. This Rule creates no exceptions to the unauthorized practice of the professions described in Chapters 89A, 89C, 89E, or 89F of the General Statutes, or the rules, standards, or codes of professional conduct promulgated by the applicable professional licensing boards.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

### **15A NCAC 02H .1051 MDC FOR INFILTRATION SYSTEMS**

The purpose of this Rule is to set forth the design requirements for infiltration systems that are constructed to meet the requirements of this Section.

- (1) SOIL INVESTIGATION. A site-specific soil investigation shall be performed to establish the hydraulic properties and characteristics of the soil within the proposed footprint and at the proposed elevation of the infiltration system.
- (2) SEPARATION FROM THE SHWT. The lowest point of the infiltration system shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant

- provides a hydrogeologic evaluation that demonstrates that the water table will subside to its pre-storm elevation within five days or less.
- (3) **SOIL SUBGRADE SURFACE.** The surface of the soil subgrade shall have a slope of less than or equal to two percent. Terraces and baffles may be installed to achieve a level subgrade.
  - (4) **PRETREATMENT.** Pretreatment devices shall be provided to prevent clogging. Pretreatment devices may include measures such as sumps in catch basins, gravel verges, screens on roof and patio drains, filters, filter strips, grassed swales, and forebays. Rooftop runoff that is discharged to the surface of an infiltration system shall not require pretreatment.
  - (5) **DRAW DOWN TIME.** Infiltration systems shall be designed to dewater the design volume to the bottom of the infiltration device within 72 hours or less. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours or less.
  - (6) **OBSERVATION PORT.** For infiltration devices located under the ground surface, a minimum of one inspection port shall be provided.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.*

#### **15A NCAC 02H .1052 MDC FOR BIORETENTION CELLS**

The purpose of this Rule is to set forth the design requirements for bioretention cells that are constructed to meet the requirements of this Section.

- (1) **SEPARATION FROM THE SHWT.** The lowest point of the bioretention cell shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant provides a hydrogeologic evaluation.
- (2) **MAXIMUM PONDING DEPTH FOR DESIGN VOLUME.** The maximum ponding depth for the design volume shall be 12 inches above the planting surface.
- (3) **PEAK ATTENUATION VOLUME.** Bioretention cells may store peak attenuation volume at a depth of up to 24 inches above the planting surface. The peak attenuation outlet shall be a maximum of 18 inches above the planting surface.
- (4) **UNDERDRAIN.** An underdrain with internal water storage shall be installed unless a soils report is provided showing that the in-situ soil infiltration rate is two inches per hour or greater prior to the initial placement of the media. The top of the internal water storage zone shall be set at a minimum of 18 inches below the planting surface.
- (5) **MEDIA DEPTH.** The minimum depth of the media depends on the design of the cell as follows:
  - (a) all cells with trees and shrubs: 36 inches;
  - (b) cells without trees and shrubs:
    - (i) with no internal water storage: 24 inches; or
    - (iii) with internal water storage: 30 inches.
- (6) **MEDIA MIX.** The media shall be a homogeneous engineered media blend with approximate volumes of:
  - (a) 75 to 85 percent medium to coarse washed sand (ASTM C33, AASHTO M 6/M 80, ASTM C330, AASHTO M195, or the equivalent);
  - (b) 8 to 10 percent fines (silt and clay); and
  - (c) 5 to 10 percent organic matter (such as pine bark fines).
- (7) **MEDIA P-INDEX.** The phosphorus index (P-index) for the media shall not exceed 30 in Nutrient Sensitive Waters (NSW) as defined in 15A NCAC 02B .0202 and shall not exceed 50 elsewhere.
- (8) **NO MECHANICAL COMPACTION.** The media shall not be mechanically compacted. It is recommended to either water it or walk on it as it is placed.
- (9) **MAINTENANCE OF MEDIA.** The bioretention cell shall be maintained in a manner that results in a drawdown of at least one inch per hour at the planting surface.
- (10) **PLANTING PLAN.** For bioretention cells with vegetation other than sod, the planting plan shall be designed to achieve a minimum of 75 percent plant coverage at five years after planting. The maximum coverage with tree or shrub canopy shall be 50 percent at five years after planting. If sod is used, then it shall be a non-clumping, deep-rooted species.

- (11) MULCH. For bioretention cells with vegetation other than sod, triple shredded hardwood mulch shall be used for the portion of the cell that will be inundated. Mulch shall be uniformly placed two to four inches deep.
- (12) CLEAN-OUT PIPES. A minimum of one clean-out pipe shall be provided on each underdrain line. Clean out pipes shall be capped.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*

#### **15A NCAC 02H .1053 MDC FOR WET PONDS**

The purpose of this Rule is to set forth the design requirements for wet ponds that are constructed to meet the requirements of this Section.

- (1) MAIN POOL SURFACE AREA AND VOLUME. The main pool of the wet pond shall be sized using either:
  - (a) the Hydraulic Retention Time (HRT) Method; or
  - (b) the SA/DA and Average Depth Method.
- (2) MAIN POOL DEPTH. The average depth of the main pool shall be three to eight feet below the permanent pool elevation. The applicant shall have the option of excluding the submerged portion of the vegetated shelf from the calculation of average depth.
- (3) SEDIMENT STORAGE. The forebay and main pool shall have a minimum sediment storage depth of six inches.
- (4) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (5) FOREBAY. A forebay that meets the following specifications shall be included;
  - (a) Forebay volume shall be 15 to 20 percent of the volume in the main pool;
  - (b) The forebay entrance shall be deeper than the forebay exit;
  - (c) The water flowing over or through the structure that separates the forebay from the main pool shall flow at a nonerosive velocity; and
  - (d) If sediment accumulates in the forebay in a manner that reduces its depth to less than 75 percent of its design depth, then the forebay shall be cleaned out and returned to its design state.
- (6) VEGETATED SHELF. The main pool shall be equipped with a vegetative shelf around its perimeter. The minimum width of the vegetated shelf shall be six feet and the slope shall be no steeper than 6:1 (horizontal to vertical).
- (7) DRAWDOWN TIME. The design volume shall draw down to the permanent pool level between two and five days.
- (8) PROTECTION OF THE RECEIVING STREAM. The wet pond shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (9) FOUNTAINS. If fountains are proposed, then documentation shall be provided that they will not cause a resuspension of sediment within the pond, or cause erosion on the side slopes of the pond.
- (10) TRASH RACK. A trash rack or other device shall be provided to prevent large debris from entering the outlet system.
- (11) VEGETATION. The following criteria apply to vegetation in and around the wet pond:
  - (a) The dam structure, including front and back embankment slopes, of the pond shall be vegetated with non-clumping turf grass; trees and woody shrubs shall not be allowed; and
  - (b) The vegetated shelf shall be planted with a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet of shelf area.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*

#### **15A NCAC 02H .1054 MDC FOR STORMWATER WETLANDS**

The purpose of this Rule is to set forth the design requirements for stormwater wetlands that are constructed to meet the requirements of this Section.

- (1) TEMPORARY PONDING DEPTH. The ponding depth for the design volume shall be a maximum of 15 inches above the permanent pool.

- (2) PEAK ATTENUATION DEPTH. The wetland may be designed to temporarily pond peak attenuation volume at a depth exceeding 15 inches.
- (3) SURFACE AREA. The surface area shall be sufficient to limit the ponding depth to 15 inches or less. The surface area specifications in Items (6) through (9) of this Rule are based on the wetland at its temporary ponding depth.
- (4) SOIL AMENDMENTS. The pH, compaction, and other attributes of the first 12-inch depth of the soil shall be adjusted if necessary to promote plant establishment and growth.
- (5) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (6) FOREBAY. A forebay shall be provided at the inlet to the stormwater wetland. The forebay shall comprise 10 to 15 percent of the wetland surface area. The forebay depth shall be 24 to 40 inches below the permanent pool elevation. The forebay entrance shall be deeper than the forebay exit. If sediment accumulates in the forebay in a manner that reduces its depth to 15 inches, then the forebay shall be cleaned out and returned to its design state.
- (7) NON-FOREBAY DEEP POOLS. Deep pools shall be provided throughout the wetland and adjacent to the outlet structure to prevent clogging. The non-forebay deep pools shall comprise 5 to 15 percent of the wetland surface area and shall be designed to retain water between storm events. The deep pools at their deepest points shall be at least 18 inches below the permanent pool elevation.
- (8) SHALLOW WATER ZONE. The shallow water zone shall comprise 35 to 45 percent of the wetland surface area. The shallow water zone shall be zero to nine inches below the permanent pool elevation.
- (9) TEMPORARY INUNDATION ZONE. The temporary inundation zone shall comprise 30 to 45 percent of the wetland surface area. The temporary inundation zone shall be between 0 and 15 inches above the permanent pool elevation.
- (10) DRAWDOWN TIME. The design volume shall draw down to the permanent pool level between two and five days.
- (11) PROTECTION OF THE RECEIVING STREAM. The wetland shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (12) LANDSCAPING PLAN. A landscape plan shall be provided and shall include the following:
  - (a) delineation of planting zones;
  - (b) plant layout with species names and locations; and
  - (c) total number and sizes of all plant species.
- (13) SHALLOW WATER PLANTINGS. The shallow water zone shall be planted with a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet (equivalent to 2 foot on center spacing).
- (14) TEMPORARY INUNDATION ZONE PLANTINGS. The temporary inundation zone shall be planted according to one of the following options:
  - (a) a minimum of three diverse species of herbaceous, native vegetation at a minimum density of 50 plants per 200 square feet (equivalent to 2 foot on center spacing);
  - (b) a minimum of eight shrubs per 200 square feet (equivalent to 5 foot on center spacing); or
  - (c) a minimum of one tree and a minimum of 40 grass-like herbaceous plants per 100 square feet.
- (15) DAM STRUCTURE AND PERIMETER FILL SLOPES. On the dam structure and perimeter fill slopes, non-clumping turf grass shall be provided; trees and woody shrubs shall not be allowed.
- (16) NO CATTAILS. Cattails shall not be planted in the wetland.
- (17) TRASH RACK. A trash rack or other device to trap debris shall be provided on piped outlet structures.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

#### **15A NCAC 02H .1055 MDC FOR PERMEABLE PAVEMENT**

The purpose of this Rule is to set forth the design requirements for permeable pavement systems that are constructed to meet the requirements of this Section.

- (1) SOIL INVESTIGATION. For infiltrating pavement systems, site-specific soil investigation shall be performed to establish the hydraulic properties and characteristics within the proposed footprint and at the proposed elevation of the permeable pavement system.

- (2) SHWT REQUIREMENTS. The minimum separation between the lowest point of the subgrade surface and the SHWT shall be:
  - (a) two feet for infiltrating pavement systems; however, the separation may be reduced to a minimum of one foot if the applicant provides a soils report that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours; and
  - (b) one foot for detention pavement systems.
- (3) SITING. Permeable pavement shall not be installed in areas where toxic pollutants are stored or handled.
- (4) SOIL SUBGRADE SLOPE. The soil subgrade surface shall have a slope of less than or equal to two percent.
- (5) STONE BASE. Washed aggregate base materials shall be used.
- (6) PAVEMENT SURFACE. The proposed pavement surface shall have a demonstrated infiltration rate of at least 50 inches per hour using a head less than or equal to 4 inches.
- (7) RUNOFF FROM ADJACENT AREAS. Runoff to the permeable pavement from adjacent areas shall meet these requirements:
  - (a) The maximum ratio of additional built-upon area that may drain to permeable pavement is 1:1. Screened rooftop runoff shall not be subject to the 1:1 loading limitation.
  - (b) Runoff from adjacent pervious areas shall be prevented from reaching the permeable pavement except for incidental, unavoidable runoff from stable vegetated areas.
- (8) DRAW DOWN TIME. Infiltrating permeable pavement systems shall be designed to dewater the design volume to the bottom of the subgrade surface within 72 hours. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours.
- (9) OBSERVATION WELL. Permeable pavement shall be equipped with a minimum of one observation well placed at the low point in the system. If the subgrade is terraced, then there shall be one observation well for each terrace. Observation wells shall be capped.
- (10) DETENTION SYSTEMS. Pavement systems may be designed to detain stormwater in the aggregate for a period of two to five days.
- (11) EDGE RESTRAINTS. Edge restraints shall be provided around the perimeter of permeable interlocking concrete pavers (PICP) and concrete grid pavers.
- (12) GRADE WHEN DRY. The soil subgrade for infiltrating permeable pavement shall be graded when there is no precipitation.
- (13) INSPECTIONS AND CERTIFICATION. After installation, permeable pavement shall be protected from sediment deposition until the site is completed and stabilized. An in-situ infiltration permeability test shall be conducted and certified on the pavement after site stabilization.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*

#### **15A NCAC 02H .1056 MDC FOR SAND FILTERS**

The purpose of this Rule is to set forth the design requirements sand filters that are constructed to meet the requirements of a State post-construction stormwater program.

- (1) SHWT SEPARATION. The minimum separation between the lowest point of the sand filter system and the SHWT shall be:
  - (a) two feet for open-bottom designs; and
  - (b) one foot for closed bottom designs. Exceptions to the one foot SHWT separation may be made if the applicant provides documentation that the design will neither float nor drain the water table.
- (2) TWO CHAMBER SYSTEM. The sand filter shall include a sediment chamber and a sand chamber. Storage volume in each chamber shall be equivalent.
- (3) SEDIMENT/SAND CHAMBER SIZING. The volume of water that can be stored in the sediment chamber and the sand chamber above the sand surface combined shall be 0.75 times the treatment volume. The elevation of bypass devices shall be set above the ponding depth associated with this volume. The bypass device may be designed to attenuate peak flows.
- (4) MAXIMUM PONDING DEPTH. The maximum ponding depth from the top of the sand to the bypass device shall be six feet.

- (5) FLOW DISTRIBUTION. Incoming stormwater shall be evenly distributed over the surface of the sand chamber.
- (6) SAND MEDIA SPECIFICATION. Sand media shall meet ASTM C33 or the equivalent.
- (7) MEDIA DEPTH. The filter bed shall have a minimum depth of 18 inches. The minimum depth of sand above the underdrain pipe shall be 12 inches.
- (8) MAINTENANCE OF MEDIA. The sand filter shall be maintained in a manner that results in a drawdown of at least two inches per hour at the sand surface.
- (9) CLEAN-OUT PIPES. At least one clean-out pipe shall be provided at the low point of each underdrain line. Clean out pipes shall be capped.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*

#### **15A NCAC 02H .1057 MDC FOR RAINWATER HARVESTING**

The purpose of this Rule is to set forth the design requirements for rainwater harvesting systems that are constructed to meet the requirements of this Section.

- (1) MAJOR COMPONENTS OF A RAINWATER HARVESTING SYSTEM. Rainwater harvesting systems shall include the following components:
  - (a) a collection system;
  - (b) a pre-treatment device to minimize gross and coarse solids collection in the tank;
  - (c) a cistern or other storage device;
  - (d) an overflow; and
  - (e) a distribution system.
- (2) FATE OF CAPTURED WATER. Captured stormwater shall be used or discharged as follows:
  - (a) use to meet a water demand. The usage, type, volume, frequency, and seasonality of water demand shall be established and justified;
  - (b) discharge through a passive drawdown device to a vegetated infiltration area or another SCM; or
  - (c) a combination of use and passive discharge.
- (3) SIZING. A rainwater harvesting system shall be considered as a primary SCM if the system is sized and water demand, passive discharge, or a combination of the two is provided for 85 percent of the total annual runoff volume as demonstrated through water balance calculations.
- (4) WATER BALANCE CALCULATIONS. The water balance shall be calculated using the NCSU Rainwater Harvester model, which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <https://stormwater.bae.ncsu.edu/>, or another continuous-simulation hydrologic model that calculates the water balance on a daily or more frequent time-step using a minimum of five representative years of actual rainfall records. The model shall account for withdrawals from the cistern for use, active or passive drawdown, and additions to the cistern by rainfall, runoff, and a make-up water source if applicable.
- (5) DISTRIBUTION SYSTEM. The distribution system shall be tested for functionality prior to the completion of the rainwater harvesting system. The design shall include a protocol for testing the functionality of the distribution system upon completion of the initial system and upon additions to the existing system.
- (6) SIGNAGE REQUIREMENTS. All harvested rainwater outlets such as spigots and hose bibs, and appurtenances shall be labeled as "Non-Potable Water" to warn the public and others that the water is not intended for drinking. Passive drawdown devices, when employed, shall be marked with identifying signage or labels that are visible to owners and maintenance personnel.

*History Note: Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a); Eff. January 1, 2017.*

#### **15A NCAC 02H .1058 MDC FOR GREEN ROOFS**

The purpose of this Rule is to set forth the design requirements for green roofs that are constructed to meet the requirements of this Section.

- (1) MEDIA SPECIFICATION. The maximum organic fraction of the media shall be 10 percent by volume.



- (2) DESIGN VOLUME. The design volume for a green roof shall equal the media depth times the plant available water (PAW). The maximum rainfall depth that may be treated by a green roof shall be 1.5 inches.
- (3) MINIMUM MEDIA DEPTH. The minimum media depth shall be four inches if the roof will not be irrigated or three inches if the roof will be irrigated. For roofs with three-inch media depths, an irrigation plan shall be included in the Operation and Maintenance Plan.
- (4) VEGETATION SPECIFICATION. The planting plan shall be designed to achieve a 75 percent vegetative cover within two years.
- (5) SLOPE. The green roof shall have a slope (or pitch) of no greater than eight percent.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

#### **15A NCAC 2H .1059 MDC FOR LEVEL SPREADER-FILTER STRIPS**

The purpose of this Rule is to set forth the design requirements for level spreader-filter strips that are constructed to meet the requirements of this Section.

- (1) LEVEL SPREADER LENGTH. The level spreader shall be a minimum of 10 feet in length per one cubic foot per second of stormwater flow that is directed to it.
- (2) REQUIRED STORM INTENSITY AND BYPASS. The required storm intensity and bypass system shall be based on the source of the stormwater:
  - (a) a level spreader that receives flow directly from the drainage area shall be sized based on the flow rate during the 0.75 inch per hour storm, with a flow bypass system for larger storm events; or
  - (b) a level spreader that receives flow from an SCM shall be sized based on the draw down rate of the design volume, with a flow bypass for larger storm events.
- (3) EXCEPTION FROM FLOW BYPASS REQUIREMENT. A flow bypass system shall not be needed if the level spreader is sized to handle the flow during 10-year storm event.
- (4) BLIND SWALE. Upslope of the level spreader, there shall be a blind swale or other method of ponding water. The blind swale shall be designed to provide for uniform overtopping of the level spreader.
- (5) LEVEL SPREADER SPECIFICATIONS. The lip of the level spreader shall be at a uniform elevation with a construction tolerance of plus or minus 0.25 inch at any point along its length. The level spreader shall be constructed of concrete or other stable material.
- (6) LEVEL SPREADER SHAPE. The level spreader shall be straight or convex in plan view.
- (7) TRANSITION ZONE. Downslope of the level spreader, there shall be a one to three inch drop followed by a transition zone that shall be protected from erosion by aggregate or high performance turf reinforcement matting. The transition zone shall be a minimum of 12 inches wide.
- (8) MINIMUM WIDTH OF THE FILTER STRIP. The minimum width of the filter strip shall be 30 feet, measured perpendicular to the level spreader lip.
- (9) NO DRAWS OR CHANNELS IN THE FILTER STRIP. The filter strip shall not contain draws or channels.
- (10) FILTER STRIP SPECIFICATIONS. The following specifications shall apply to the filter strip:
  - (a) filter strips shall be graded with a uniform transverse slope of eight percent or less;
  - (b) the pH, compaction, and other attributes of the first 12 inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
  - (c) the filter strip and side slopes shall be planted with non-clumping, deep-rooted grass sod; and
  - (d) soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

#### **15A NCAC 02H .1060 MDC FOR DISCONNECTED IMPERVIOUS SURFACES**

The purpose of this Rule is to set forth the design requirements for disconnected impervious surfaces that are constructed to meet the requirements of this Section.

- (1) **VEGETATED RECEIVING AREA FOR DISCONNECTED ROOFS.** The following requirements shall apply to vegetated receiving areas for disconnected roofs:
  - (a) a maximum of 500 square feet of roof shall drain to each disconnected downspout;
  - (b) the receiving vegetated area shall be a rectangular shape. The length of the rectangle in the direction of flow shall be a minimum of 0.04 times the area of the roof that drains to it. The width of the rectangle shall be one-half the length of the rectangle.
  - (c) the downspout shall discharge in the center of upslope end of the vegetated receiving area;
  - (d) the downspout shall be equipped with a splash pad; and
  - (e) the vegetated receiving area shall not include any built-upon area.
- (2) **VEGETATED RECEIVING AREA FOR DISCONNECTED PAVEMENT.** The following requirements shall apply to the vegetated receiving area for disconnected pavement:
  - (a) the pavement draining to the vegetated receiving area shall be a maximum of 100 feet in length in the direction of flow;
  - (b) the vegetated receiving area shall be a minimum of 10 feet in length in the direction of flow; and
  - (c) the vegetated receiving area shall not contain any built-upon area except for incidental areas such as utility boxes, signs, and lamp posts.
- (3) **VEGETATED RECEIVING AREA SPECIFICATIONS.** The following specifications shall apply to the vegetated receiving areas for both disconnected roofs and disconnected pavement:
  - (a) vegetated receiving areas shall have a uniform transverse slope of 8 percent or less, except in Hydrologic Soil Group A soils where slope shall be 15 percent or less;
  - (b) The pH, compaction, and other attributes of the first eight inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
  - (c) the vegetated receiving area shall be planted with a non-clumping, deep-rooted grass species; and
  - (d) soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

#### **15A NCAC 02H .1061 MDC FOR TREATMENT SWALES**

The purpose of this Rule is to set forth the design requirements for treatment swales that are constructed to meet the requirements of this Section. Vegetated conveyances that are designed to convey stormwater from a project but are not intended to remove pollutants shall not be subject to this Rule, but instead shall meet the requirements of Rule .1003(2)(c) of this Section.

- (1) **SHWT.** Swales shall not be excavated below the SHWT.
- (2) **SHAPE.** Swales shall be trapezoidal in cross-section with a maximum bottom width of six feet. Side slopes stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to vertical). Steeper vegetated slopes may be accepted on a case-by-case basis provided that the applicant demonstrates that the soils and vegetation will remain stable in perpetuity based on engineering calculations.
- (3) **SWALE SLOPE AND LENGTH.** The longitudinal swale slope shall not exceed seven percent. The swale slope and length shall be designed to achieve a flow depth of six inches or less during the 0.75 inch per hour storm and a minimum hydraulic retention time of four minutes.
- (4) **GRASS SPECIFICATION.** The grass species in the swale shall be:
  - (a) non-clumping and deep-rooted;
  - (b) able to withstand a velocity of four feet per second;
  - (c) managed at an average of six inches; and
  - (d) not be cut lower than four inches.
- (5) **CONVEYANCE OF LARGER STORMS.** Swales shall be designed to non-erosively pass the ten-year storm.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

#### **15A NCAC 02H .1062 MDC FOR DRY PONDS**

The purpose of this Rule is to set forth the design requirements for dry ponds that are constructed to meet the requirements of this Section.

- (1) SEPARATION FROM THE SHWT. The lowest point of the dry pond shall be a minimum of six inches above the SHWT.
- (2) TEMPORARY POOL DEPTH. The maximum depth of the temporary pool shall be 10 feet.
- (3) UNIFORM GRADING AND POSITIVE DRAINAGE. The bottom of the dry pond shall be graded uniformly to flow toward the outlet structure without low or high spots other than an optional low flow channel.
- (4) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (5) PRETREATMENT. Pretreatment devices shall be provided to settle sediment and prevent erosion. Pretreatment devices may include measures such as gravel verges, filter strips, grassed swales, and forebays.
- (6) DRAWDOWN TIME. The design volume shall draw down between two and five days.
- (7) PROTECTION OF THE RECEIVING STREAM. The dry pond shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (8) OUTLET. The dry pond shall include a small permanent pool near the outlet orifice to reduce clogging and keep floating debris away from the orifice. A screen or other device shall be provided to prevent large debris from entering the outlet system.
- (9) VEGETATION. The dam structure, including the front and back embankment slopes, shall be planted with non-clumping turf grass, and trees and woody shrubs shall not be allowed.

*History Note:* Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);  
Eff. January 1, 2017.

## **SECTION .1100 - BIOLOGICAL LABORATORY CERTIFICATION**

### **15A NCAC 02H .1101 PURPOSE**

These Rules set forth the requirements for certification of commercial, industrial, and public laboratories to perform biological toxicity testing and population surveys of water and wastewater as required for National Pollutant Discharge Elimination System (NPDES) permits by G.S. 143-215.3(a)(10) and Environmental Management Commission Rules for Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina, found in Subchapter 2B of this Chapter, Section .0200, and Rules for Surface Water Monitoring, Reporting, found in Subchapter 2B of this Chapter, Section .0500.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. March 1, 1993.

### **15A NCAC 02H .1102 SCOPE**

These Rules apply to commercial, industrial, or public laboratories which perform toxicity testing of water or wastewater for persons subject to any requirements for monitoring of toxicity through direct measurement of the effects of a specific water or wastewater or aquatic organisms in laboratory tests or through field surveys.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988.

### **15A NCAC 02H .1103 DEFINITIONS**

The following terms as used in this Section shall have the assigned meaning:

- (1) Categories are groups of parameters which differ by measured test exposure regimes (chronic and acute) and, in the case of toxicological assay, through the presence or absence of vertebrae in the species of test organisms used or being a member of the plant kingdom. All field population survey techniques are contained within one category.
- (2) Certification is a declaration by the Division that personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicants' proficiency has been considered and found acceptable.

- (3) Commercial Laboratory means any laboratory, including its employees and agents, which analyzes, for others, wastewater samples for toxicity measurements or for their resultant impacts on the receiving waters.
- (4) Decertification is the loss of certification.
- (5) Director means the Director of the North Carolina Division of Environmental Management, or his successor.
- (6) Division means the North Carolina Division of Environmental Management, or its successor.
- (7) Evaluation samples are samples submitted by the State Laboratory to the commercial, municipal, industrial, or public laboratory as an unknown toxicant for measurement of toxicity or as an unknown set of preserved organisms for identification to specified levels of taxonomic classification.
- (8) Falsified data or information means data or information that has been made untrue by alteration, fabrication, intentional omission, substitution, or mischaracterization. The agency need not prove intent to defraud to prove data is falsified.
- (9) Inaccurate data or other information means data or information that is in any way incorrect or mistaken.
- (10) Industrial Laboratory means a laboratory, including its employees and agents, operated by an industry to analyze samples from its wastewater treatment plants for toxicity measurements or resultant impacts to receiving waters.
- (11) Parameters are subgroups of categories. Parameters are unique and separate if they are in separate categories or are performed using different species of test organisms. For the category, Aquatic Population Survey, separate parameters are to be considered fish, macroinvertebrates, algae, aquatic macrophytes, and zooplankton.
- (12) Public Laboratory means a laboratory, including its employees and agents, operated by a municipality, county, water and sewer authority, sanitary district, metropolitan sewerage district, or state or federal installation or any other governmental unit to analyze samples from its wastewater treatment plant(s) for toxicity measurements or resultant impacts to receiving waters.
- (13) Recertification is reaffirmation of certification.
- (14) Split samples are samples from either a surface water effluent discharge, surface water, or aquatic biological population survey which are segregated at the point of sampling or in the case of field survey, collected independently and then analyzed separately by both the State Laboratory and the commercial, public or industrial laboratory.
- (15) State laboratory means the Environmental Sciences Branch of the Water Quality Section of the North Carolina Division of Environmental Management or its successor.
- (16) Toxicant - Any specific chemical or compound or mixture of chemicals or compounds regulated within an NPDES permit and/or defined as a toxic substance in Rule .0202 of Subchapter 2B.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
 Eff. October 1, 1988;  
 Amended Eff. April 1, 1993.

#### **15A NCAC 02H .1104 FEES ASSOCIATED WITH CERTIFICATION PROGRAM**

##### **(a) Certification Fees:**

- (1) Certification Fees shall be a minimum of five hundred dollars per year (\$500.00). The first category will be certified at a cost of five hundred dollars (\$500.00). Additional categories will be certified at a cost of four hundred dollars (\$400.00) per category. The addition of parameters not included in the original certification will be certified at a cost of one hundred dollars (\$100.00) per parameter.
- (2) Certification fees are due upon application and no later than 45 days prior to the requested certification date.

##### **(b) Renewal Fees:**

- (1) The certified laboratory will pay the state a four hundred dollar (\$400.00) per year renewal fee for each category of certification or the minimum fee five hundred dollars (\$500.00) if only one category is certified.
- (2) Recertification fees shall be four hundred dollars (\$400.00) per category recertified.
- (3) Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification, recertification and maintenance of certification.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;

*Eff. October 1, 1988.*

**15A NCAC 02H .1105 CERTIFICATION**

- (a) Certification is affirmation by the Director or his delegate that the requirements specified by these rules have been met for specific categories and parameters and that all fees associated with certification have been received.
- (b) Commercial, public and industrial laboratories must obtain certification from the Division of Environmental Management only for biological parameters which will be reported to comply with the rules and requirements as stated in an administrative letter, permit condition, permit limit, special order by consent, judicial order, or the biological monitoring requirements established by the Division.
- (c) For the purposes of certification and setting fees, parameters are grouped in the following five categories:
  - (1) Acute Toxicity Testing/Invertebrate;
  - (2) Acute Toxicity Testing/Vertebrate;
  - (3) Chronic Toxicity Testing/Invertebrate;
  - (4) Chronic Toxicity Testing/Vertebrate;
  - (5) Agal and Aquatic Plant Toxicity Testing;
  - (6) Aquatic Population Survey and Analysis.
- (d) All certifications are designated for the period of one year after initial certification.
- (e) Protocol Documents considered as standard methodology and facilities and equipment requirements considered as minimum acceptable resources will be listed in the Certification Criteria/Procedures Document.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(1)(10); 143-215.66;  
Eff. October 1, 1988.*

**15A NCAC 02H .1106 DECERTIFICATION**

- (a) A laboratory certification may be revoked for all categories for:
  - (1) Failing to maintain the facilities, records, personnel, equipment or quality assurance program as set forth in the application or these Rules; or
  - (2) Submitting inaccurate or falsified data reports or other information; or
  - (3) Failing to pay required fees by the date due.
- (b) A laboratory certification may be revoked for a category for failure to:
  - (1) Obtain acceptable results on two consecutive evaluation sample submittals from the Division. Acceptable results on performance evaluation samples are those that vary by less than two standard deviations of the value established by the Division. The state laboratory may apply specific variance or statistical limits or performance criteria on performance evaluation samples or split samples for a particular testing procedure, including control population effects and taxonomic identification, as published in the Certification Criteria/Procedures Document; or
  - (2) Obtain acceptable results as set out in Paragraph (1) of this Rule on two consecutive split samples that have also been analyzed by the Division; or
  - (3) Submit a split sample to the Division as requested; or
  - (4) Use approved testing techniques; or
  - (5) Report to the state laboratory equipment changes that would affect its ability to perform a test category within 30 days of such change; or
  - (6) Report to the state laboratory analysis of performance evaluation samples submitted by the Division within required time of completion; or
  - (7) Maintain records and perform quality controls as set forth by these Rules and the Division for a particular category; or
  - (8) Maintain equipment required for any certified parameter; or
  - (9) Implement and maintain Quality Control Programs approved in conjunction with certification; or
  - (10) Maintain a qualified staff.
- (c) Decertification Requirements:
  - (1) A laboratory is not to analyze samples for parameters in decertified categories for programs described in Rule .1102 of this Section.
  - (2) A decertified commercial laboratory must notify any clients affected by the decertification of such and supply the state laboratory with a list of those clients affected and written certification that those clients have been notified. Should the decertified laboratory arrange for a certified laboratory to perform analyses

during the period of decertification, the decertified laboratory must supply the Division with the name of the replacement laboratory and the client(s) involved. The certified laboratory's name which performs analyses must appear on all data submitted to the Division.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. March 1, 1993.

#### **15A NCAC 02H .1107 RECERTIFICATION**

- (a) A laboratory decertified for any reason, other than the submittal of falsified data reports or other information, may be recertified after 30 days, upon satisfactory demonstration to the state laboratory that all deficiencies have been corrected.
- (b) In the case of a laboratory decertified for submitting falsified data reports or other information, recertification shall not occur until at least 12 months after the decertification and then only at such time as the laboratory has satisfactorily demonstrated to the Director that the standards for initial certification have been met.
- (c) Should decertification occur due to either failure of performance samples or split samples, a written request must be made to the state laboratory requesting evaluations similar to the parameters for which the laboratory was decertified. Two consecutive samples must be successfully evaluated to achieve recertification. The first of these samples for recertification will be submitted or arranged by the Division no later than 30 days after receipt of the written request. The second will be submitted or arranged no later than 30 days after the first.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. March 1, 1993.

#### **15A NCAC 02H .1108 RECIPROCITY**

- (a) Laboratories certified by other states or federal programs may be given reciprocal certification where such programs meet the requirements of these Rules. In requesting certification through reciprocity, laboratories shall include with the application a copy of their certification and the rules of the original certifying agency.
- (b) Laboratories certified on the basis of program equivalency shall pay all fees specified by these Rules.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. March 1, 1993.

#### **15A NCAC 02H .1109 ADMINISTRATION**

The Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, or his delegate, is delegated authority to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. March 1, 1993.

#### **15A NCAC 02H .1110 IMPLEMENTATION**

- (a) Each laboratory requesting state certification or certification renewal or recertification shall submit an application in duplicate to the Division. Each application will be reviewed to determine the adequacy of personnel, equipment, records, quality control procedures and methodology. After receiving a completed application and prior to issuing certification, a representative of the Division may visit each laboratory to verify the information in the application and the adequacy of the laboratory.
- (b) Analytical methods, sample preservation, sample containers and sample holding times shall conform to the methodologies specified in the Certification/Criteria Procedures Document. Deviations from these methods are acceptable only upon prior written approval from the state laboratory.
- (c) In order to maintain certification, each laboratory will demonstrate satisfactory performance on evaluation samples submitted by the Division. These will be required no more than three times annually of certified laboratories for each parameter certified.

(d) In order to receive and maintain certification the following minimum criteria must be met:

- (1) The supervisor of an aquatic toxicology or biological survey laboratory must have a minimum of a B.S. degree from an accredited college or university in a biological science or closely related science curriculum and at least three years of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate, or a M.S. degree in a biological or closely related science and at least one year of cumulative laboratory experience in aquatic toxicity testing or aquatic biological survey, as appropriate.
- (2) All laboratory supervisors are subject to review by the Division. One person may serve as supervisor of no more than two laboratories. The supervisor is to provide direct supervision and evaluation of all technical personnel and is responsible for the proper performance and reporting of all analyses. Upon absence, the supervisor shall arrange for a suitable substitute capable of insuring the proper performance of all laboratory procedures. Existing laboratory supervisors who do not meet the minimum requirements may be accepted after review by the Division if they meet all other certification requirements and previous performance is deemed adequate.
- (3) All applications and fees are due 45 days prior to the requested certification date. Problems identified with the applying laboratory and resolution of these problems may extend the requested 45 day period from application to certification.
- (4) Each laboratory shall develop and maintain a document outlining quality control procedures for all parameters in their certification and dissolved oxygen, temperature, and pH. All aquatic toxicology laboratories must also develop and maintain a document outlining quality control procedures for total hardness and total residual chlorine. These documents are to be included with submittal of the application.
- (5) Each laboratory certified for the category of Aquatic Population Survey and Analysis shall develop and maintain a document outlining quality control procedures for taxonomic identifications and life-stage determinations.
- (6) Supporting records shall be maintained as evidence that these practices are being effectively carried out and shall be available to the state laboratory upon request.
- (7) The quality control program is to be approved in conjunction with certification by the Director.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988;  
Amended Eff. October 1, 1993.

#### **15A NCAC 02H .1111 BIOLOGICAL LABORATORY CERT/CRITERIA PROCEDURES DOCUMENT**

The Biological Laboratory Certification/Criteria Procedures Document describes specific scientific reporting units, forms, test methods and procedures pertaining to certification.

The manual, and any addition thereto, shall be approved by the director before it is released to the public. The manual shall be mailed to all certified biological laboratories and to any persons on the mailing list. To be placed on the mailing list, a letter must be sent to the director.

If the manual is revised at any time, all changes shall be sent to the certified biological laboratories and those persons on the mailing list.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;  
Eff. October 1, 1988.

### **SECTION .1200 - SPECIAL ORDERS**

#### **15A NCAC 02H .1201 PURPOSE**

The purpose of this Section is to implement the provisions of G.S. 143-215.2 and G.S. 143-215.110 pertaining to the issuance of surface water, ground water and air quality Special Orders by the Environmental Management Commission.

*History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.110;  
Eff. October 1, 1990.

#### **15A NCAC 02H .1202 DEFINITIONS**

The terms used herein shall be as defined in G.S. 143-212 and G.S. 143-213. Other terms used in this Section are defined as follows:

- (1) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the air or waters of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.2 or G.S. 143-215.110.
- (2) "Consent Order" or "Special Order by Consent" means a type of Special Order where the Commission enters into an agreement with the person responsible for water or air pollution to achieve some stipulated actions designed to reduce, eliminate, or prevent air or water quality degradation.
- (3) "Director" means the Director of the Division of Environmental Management.

*History Note:* Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1); 143-215.110;  
Eff. October 1, 1990.

### **15A NCAC 02H .1203 PUBLIC NOTICE**

(a) Notice of proposed Consent Order:

- (1) The Director is delegated the authority to prepare the notice of the proposed Consent Order and shall advertise it as specified in G.S. 143-215.2(a1)(1) at least 45 days prior to any final action by the Commission or the Director.
- (2) The Notice shall include at least the following:
  - (A) name, address, and phone number of the agency issuing the public notice;
  - (B) name and address of the person to whom the order is directed;
  - (C) a brief summary of the proposed conditions of the agreement including a disclosure of the final compliance date and the major permit conditions which the permittee will be allowed to exceed;
  - (D) a brief description of the procedures to be followed by the Commission or Director in reaching a final determination on the proposed agreement. This shall include explanations of the comment period and how interested persons may influence or comment on the proposal along with procedures to request a public meeting. The description shall specify that requests for a public meeting and comments are to be received by the Division within 30 days following the newspaper publication of the public notice;
  - (E) a description of the information available for public review, where it can be found, and procedures for obtaining copies of pertinent documents.

(b) Notice of public meetings for proposed Consent Order:

- (1) The Director shall consider all requests for a public meeting and if he determines that there is significant public interest, then he will cause such a meeting to be held.
- (2) Public meetings shall be noticed by the Director at least 30 days prior to the meeting.
- (3) The Notice shall be advertised in a local newspaper and provided to those persons specified in G.S. 143-215.2(a1)(2) for water quality special orders and G.S. 143-215.110(a1)(2) for air quality special orders.
- (4) The Notice shall include the information specified in (a)(2)(A), (B), (C) and (E) of this Rule relative to the identification of the parties involved, the conditions of the proposal, how to obtain additional information and the procedures to be followed by the Commission in reaching a final determination. It should also provide full information regarding the time and location for the meeting along with procedures for the various methods of providing comment.

(c) Any person may request to receive copies of all notices required by this Rule, and the Director shall mail copies of notices to those who have submitted a request.

(d) The Director may combine the requirements in Paragraphs (a) and (b) of this Rule with a combination comment period and public meeting notice.

(e) Any Special Order by Consent may be amended by the Director to incorporate minor modifications, such as reallocations of allowable flows, modification of standard conditions to reflect updated versions, correct typographical errors and interim date extensions, in a consent order without public notice provided that the said modifications may not extend final compliance date by more than four months.

(f) The requirements of this Rule for public notice and public meeting were developed to apply to Special Orders by Consent. The Commission may specify other conditions for Special Orders issued without consent.

*History Note:* Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(3);  
143-215.3(a)(4); 143-215.110;  
Eff. November 1, 1990;



*Amended Eff. August 3, 1992.*

**15A NCAC 02H .1204 FINAL ACTION ON SPECIAL ORDERS BY CONSENT**

The Director is authorized to take final action for the Commission on Special Orders by Consent except in those cases where a public meeting is held as provided in 15A NCAC 2H .1203. The final action on the proposed order shall be taken no later than 60 days following publication of the notice or, if a public meeting is held, within 90 days following the meeting.

*History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.110;  
Eff. October 1, 1990.*

**15A NCAC 02H .1205 ACTION ON SPECIAL ORDERS ISSUED WITHOUT CONSENT**

The Commission may issue a proposed Special Order without the consent of the person affected. The Commission shall notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed Special Order.

*History Note: Authority G.S. 143-215.2(b); 143-215.3(a)(1); 143-215.110(b);  
Eff. October 1, 1990;  
Amended Eff. August 3, 1992.*

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

(a) Requests for Water Quality Special Orders by Consent:

- (1) Requests by permittees must be made in triplicate on forms supplied by the Division of Environmental Management along with a nonrefundable four hundred dollars (\$400.00) fee and all other required information.
- (2) Requests found to be incomplete will be returned to the permittee with an explanation of deficiencies.
- (3) Requests must be signed as follows:
  - (A) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility for which the Order is being requested;
  - (B) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;
  - (C) in the case of a sole proprietorship, by the proprietor;
  - (D) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(b) Evaluation of the requests:

- (1) Requests will not be evaluated unless it is demonstrated by the permittee to the satisfaction of the Director that noncompliance is not due to failure by the permittee to properly operate, manage and maintain the wastewater treatment system and that the existing wastewater treatment system is being operated in such a way as to attain the highest degree of treatment possible under the existing conditions. The demonstration must also evaluate all reasonably available low-capital-cost interim improvements, even though they may not be directly related to the final treatment option. This demonstration must be made in the form of a report prepared by an independent consultant (a professional with expertise in wastewater treatment).
- (2) Requests will not be evaluated unless the permittee can demonstrate to the satisfaction of the Director that:
  - (A) funds needed to meet the requirements of the proposed order are available or will be available to meet the compliance schedule and any interim effluent limitations; or
  - (B) that the permittee can adopt specific alternative steps to achieve compliance where the permittee cannot assure total financing of needed facilities.

(c) Development of the Special Order:

- (1) The compliance schedule in the order must be sufficiently detailed to insure that the permittee is constantly progressing toward final compliance. This schedule will normally include, but not be limited to, activities such as submission of plans and specifications, starting of construction, completion of construction and achievement of final compliance.
- (2) The interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system. In cases of phased construction or expected interim treatment facility improvements, the interim limitations shall reflect these expected improvements. Likewise, if treatment units must be taken off line due to construction, the interim limitations may be modified during the period of actual outage.

- (3) To insure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. Also a monetary settlement will normally be included in the order to settle previous violations.
  - (4) The order must contain a condition that advises the permittee that it is responsible for funding the treatment system improvements and that lack of funds will not be a defense in contesting stipulated penalties.
- (d) Acceptance of additional wastewater into a wastewater treatment system owned or operated by a unit of government, in accordance with G.S. 143-215.67(b).
- (1) Additional flows will only be allowed as part of a consent Order when the following demonstrations can be made:
    - (A) New or improved wastewater treatment facilities will be constructed in the near future that will adequately treat the existing and additional waste or the permittee can adopt specific alternative steps to offset the adverse effects of the additional waste.
    - (B) The flows are needed to provide minimum reasonable service to identified new residential, commercial and industrial sources or equivalent substitutions for those sources as approved by the Director.
    - (C) The nature of the additional flows is such that the waste characteristics do not exceed those generally associated with domestic waste or are pretreated to domestic strengths. Waste of greater than normal domestic strength may be accepted if the parameter(s) are not those for which interim limitations have been developed and it can be demonstrated to the satisfaction of the Director that 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) All new and proposed industrial waste tributary to the system must be controlled using all needed mechanisms including but not limited to adoption and implementation of industrial waste control and pretreatment ordinances.
    - (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 but not limited to, 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 will not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater will 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 specific approval is granted by the Environmental Management Commission. In making this decision, the Commission will consider criteria such as but not limited to naturally occurring background dissolved oxygen levels, 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 will be allowed into the system; or
      - (ii) A predictive increase in the length of the affected segment (that segment in which the predicted dissolved oxygen is less than dissolved oxygen standards) of 0.5 miles or greater; or
      - (iii) An increase in coliform bacteria density predicted to exceed applicable water quality standards; or
      - (iv) Increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters which are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or significant impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule;
      - (v) The proposed addition of toxic pollutants in quantities not generally associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater can be supported through appropriate analyses acceptable to the Director.

- (2) Approvals of additional wastewater flows may be immediately rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director will consider factors such as but not limited to the parameter(s) being violated, the magnitude of the violation(s), the projected duration of the violation(s), the waters being impacted or projected to be impacted and the reasons for the violation(s). In the notification to the permittee that the flow has been rescinded, the Director will identify the factor(s) that made the decision necessary.

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

## **SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS**

### **15A NCAC 02H .1301 SCOPE AND PURPOSE**

- (a) The provisions of this Section shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.
- (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters which have been listed in 15A NCAC 02B .0300. If the US Army Corps of Engineers or its designee determines that a particular water or wetland is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section (15A NCAC 02H .1301 - .1305).
- (c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit. Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency. Certificates of Coverage for General Permits may be issued for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).
- (d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.
- (e) The following are exempt from this Section:
  - (1) Activities that are described in 15A NCAC 02B .0230;
  - (2) Discharges to isolated, man-made ponds or isolated ditches except for those wetlands or waters constructed for compensatory mitigation or for on-site stormwater management;
  - (3) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;
  - (4) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67);
  - (5) A discharge resulting from an activity if:
    - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;
    - (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;
    - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or
    - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to the effective date of this Rule.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);  
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and  
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#### **15A NCAC 02H .1302 APPLICATION PROCESS**

(a) Application for a Permit. Any person, as defined in G.S. 143, Article 21, desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water Quality (Director), an original and six copies of an application for a Permit. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;
- (4) the nature of the discharge including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D(e) with a check or money order to be made payable to the North Carolina Division of Water Quality. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and
- (8) the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.

(b) Maps. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters (preferably surveyed or located with Global Positioning System equipment) including wetlands within the boundaries of said lands.

(c) Request For Additional Information. The Director may request, in writing within 60 days of receipt of an application and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications shall be returned to the applicant.

(d) Omissions From Applications. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division of Water Quality based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in Paragraph (e).

(e) Investigations. The staff of the Department of Environment and Natural Resources (Department) shall conduct such investigation as the Director deems necessary and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.

(h) Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a)

and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division of Water Quality for review under this Permit.

*History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);  
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Temporary Adoption Eff. October 22, 2001;  
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### **15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

(a) Notice of Publication. Within 30 days of receipt of a complete application, the Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is eligible for a General Permit:

- (1) Individual Permit. Notice of the Director's intent to issue or deny a complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. Publication shall be made at least 30 days prior to proposed final action by the Director on the application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.
- (2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director on the application. The notice shall also state where additional information is on file with the Department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department. Any person who desires a public hearing on an Individual or General Permit application shall so request in writing to the Director within 30 days following the publication of the notice of intent.

(c) Notice of Hearing. Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If the Director determines that there is significant public interest in holding a hearing, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(d) Wetland Permit Mailing List. Any person may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a Wetland Permit Mailing List and shall mail copies of notices to all persons on the list.

(e) If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any public hearing held for this Rule may be coordinated with those hearings.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c);  
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and  
October 12, 2001;  
Temporary Adoption Eff. October 22, 2001;  
Eff. April 1, 2003.*

### **15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE**

(a) Not later than 60 days following the publication of the notice of intent or decision to process the project under a General Permit, or within 90 days following a public hearing, the Director shall issue, issue with modifications, or deny the complete Permit application or complete application for Certificate of Coverage. Failure to take action within 60 or 90 days, respectively, shall result in the waiver of the permit requirement by the Director.

(b) Conditions of Permit. Any Permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to insure compliance with this Section including written post-discharge notification to the Division.

(c) Modification or Revocation of Permit or Certificate of Coverage:

- (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and
- (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(d) Notification of Unapproved Application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to be approved.

(e) Permit or Certificate of Coverage renewals shall require a new application and payment of a fee to the Division of Water Quality unless the applicant requests and is granted an extension in writing which shall be granted for a time period not to exceed one additional year provided that the construction has commenced or is under contract to commence.

(f) Contested Case Hearing for Applicant. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable conditions, shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) by filing a petition under G.S. 150B-23 within 30 days after the Director notifies the applicant or permittee of its decision in writing.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.*

#### **15A NCAC 02H .1305 REVIEW OF APPLICATIONS**

(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b) Discharges from Activities Deemed to be Permitted: Discharges resulting from activities in isolated wetlands or waters that are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as they fully comply with conditions listed below and may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts. Conditions which must be met for projects deemed to be permitted:

- (1) Erosion and sediment control practices shall equal or exceed those required by the N.C. Division of Energy, Mineral, and Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
- (2) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Energy, Mineral, and Land Resources or local delegated program determines that the land disturbance project is completed and the file is closed out;

- (3) Live or fresh concrete shall not come into contact with surface water until the concrete has hardened; and
  - (4) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.
- (c) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:
- (1) has no practical alternative under the criteria outlined in Paragraph (e) of this Rule;
  - (2) will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;
  - (3) does not result in the violation of groundwater standards, or water quality standards in the remaining surface waters;
  - (4) does not result in cumulative impacts which are environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions, and that cause or will cause a violation of downstream water quality standards;
  - (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
  - (6) provides for replacement of existing uses through mitigation with the following provisions:
    - (A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;
    - (B) Mitigation shall be at a 2:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;
    - (C) Mitigation for impacts to waters shall be conducted within the same river basin and physiographic province when practical; and
    - (D) In-kind mitigation will be required unless other forms of mitigation provide greater water quality or aquatic life benefit.
- (d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:
- (1) has no practical alternative as described in Paragraph (e) of this Rule;
  - (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;
  - (3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;
  - (4) does not result in cumulative impacts which are described in Subparagraph (c)(4) of this Rule and that cause or will cause a violation of downstream water quality standards;
  - (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
  - (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.
- (e) 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 project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.
- (f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:
- (1) The spatial and dimensional requirements of the project; or
  - (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
  - (3) The purpose of the project and how the purpose relates to placement, configuration or density.
- (g) Replacement or mitigation of unavoidable losses of existing uses in isolated wetlands shall be reviewed in accordance with the following guidelines:
- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.

- (2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.
- (3) Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks (those mitigation banks which have been approved by the United States Army Corp of Engineers through the Mitigation Banking Review Team process) shall be required whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.
- (4) Acceptable methods of wetlands mitigation are listed below:
  - (A) Restoration: Re-establishment of hydrology to the natural or reference condition which are sites within a specific geographic region that are chosen, for the purposes of functional assessment or mitigation, to encompass the known variation of a group or class of wetlands, including both natural and disturbance variations and is in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition;
  - (B) Creation: Construction of wetlands in an area where wetlands did not exist in the past;
  - (C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology; and
  - (D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to a government or non-profit agency for management.
- (5) Restoration or creation shall be the required method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration or creation is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where the state and federal review agencies have approved credit/debit ratios.
- (7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.
- (8) Mitigation for impacts to isolated wetlands designated in Paragraph (b) of this Rule shall be conducted within the same river basin and physiographic province when practical.
- (9) In-kind mitigation is required unless other forms of mitigation provide greater water quality or aquatic life benefit.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);  
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