SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0101 PURPOSE

The Rules of this Section set forth the requirements and procedures for application and issuance of state permits pursuant to G.S. 143-215.1, for the control of point sources of water pollution. These Rules apply to the following state permits and authorizations:

(1) NPDES permits for the discharge of waste or stormwater from an outlet, point source, or disposal system to surface waters of the state;
(2) NPDES permits for the discharge of stormwater;
(3) authorizations or permits for the construction, entering a contract for construction, and operation of treatment works with such a discharge; and
(4) permits for the discharge of waste from a pretreatment facility to a disposal system that discharges to surface waters of the state.

History Note: *Authority G.S. 143-215.1; 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, 1984;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0102 SCOPE

(a) The Rules in this Section apply to all persons:

(1) discharging or proposing to discharge waste, directly or indirectly, from a point source to the surface waters of the state;
(2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Subparagraph (1) of this Paragraph;
(3) operating or proposing to operate a treatment works with a discharge as described in Subparagraph (1) of this Paragraph; or
(4) discharging or proposing to discharge stormwater that results in water pollution.

(b) These Rules do not apply to:

(1) those persons who have obtained a permit from a local pretreatment control authority that is authorized to issue such permits under a local pretreatment program approved in accordance with Section .0900 of this Subchapter;
(2) sanitary sewage systems or solid waste management facilities that are permitted under the authority of the Commission for Public Health; and
(3) other persons or activities specifically exempted in these Rules.

History Note: *Authority G.S. 143-215.1; 143-215.1(b)(4)(e); 143-215.3(a)(1); 143-215.3(a)(14);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987; December 1, 1984;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

(1) "Authorization to Construct" means a permit required pursuant to Rule .0138 of this Section 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 Environmental Quality.

(7) "Director" means the Director of the Division of Water Resources or Division of Energy, Mineral and Land Resources, in the Department of Environmental Quality, whichever is the permitting authority, or his or her 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 Resources or the Division of Energy, Mineral and Land Resources, Department of Environmental Quality, whichever is the permitting authority.

(10) "EPA" means the United States Environmental Protection Agency.

(11) "Existing", with respect to implementing the NPDES permitting program, means:

(a) facilities that physically exist and have been legally constructed prior to the adoption of state or federal regulatory requirements for new facilities. For the purposes of this definition, "legally constructed" means that the facility obtained all necessary approvals for construction in accordance with local, state, and federal regulations;

(b) facilities that 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; or

(c) facilities that 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 nominal investment of money or other resources in the construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion, in accordance with 15A NCAC 02B .0407, Guidance for Determining a New Source.

(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 an NPDES Permit nor have any facilities constructed;

(b) facilities that physically exist, however are not legally constructed. For the purposes of this definition, "legally constructed" means that the facility obtained all necessary approvals for construction in accordance with local, state, and federal regulations;

(c) facilities that have received an NPDES Permit and, where necessary, an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current Permit. For the purpose of this definition, construction shall be considered to be "significant" if more than a nominal investment of money or other resources has been invested in the construction of the wastewater treatment facility, based on the facility size, complexity, cost, and the required construction time for completion, in accordance with 15A NCAC 02B .0407, Guidance for Determining a New Source; or

(d) any facility that increases treatment plant hydraulic capacity without first obtaining an Authorization to Construct in accordance with Rule .0138 of this Section.

(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 treatment performance standards applied to a "new source", such as standards set forth in Title 40, Subchapter N, of the Code of Federal Regulations (Effluent Guidelines and Standards).

(19) "Notice of Intent" means written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit in accordance with Rules .0105 and .0127 of this Section.

(20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities engaged in the retail sale of petroleum products. For the purposes of determining eligibility for general permits per 15A NCAC 02H .0127, oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities shall be considered to be oil terminal storage facilities.

(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" 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, concentrated animal-feeding operation, or vessel or other floating craft 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 and editions. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(26) "Professional Engineer" means a person who is registered and licensed as a professional engineer by the North Carolina Board of Examiners For Engineers and Surveyors.

(27) "Sand dredge" means a facility that removes sand from river bottoms. No other mining activities are included in this definition.

(28) "Seafood packing facility" means a business that is engaged in the sorting and packing of fresh seafood and that 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 that is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.

(30) "Staff" means the Division, or its successor.

(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 or from spas with filter backwash facilities.

(33) "Tourist Gem Mine" means a business that 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;
Readopted Eff. May 1, 2020;
Amended Eff. July 1, 2020.

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) Permit Applications.

(1) 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 to the Director three copies of its permit application as described in this Rule or one copy of the application if submitted electronically in accordance with 40 CFR Parts 3 and 127.

(2) Application for state NPDES or pretreatment permits shall be made on EPA application forms. EPA forms can be accessed free of charge at https://www.epa.gov/npdes/npdes-applications-and-forms.

(3) Notice of Intent to seek coverage under a general NPDES permit shall be made in accordance with Rule .0127 of this Section.

(4) Where the Division is the control authority, application for pretreatment permits shall be made in accordance with 15A NCAC 02H .0916(b) and shall include the information required in Subparagraph (c)(1) of that Rule.

(5) Application for Authorization to Construct permits shall be made in accordance with Rule .0138 of this Section.

(b) Permit Fees.

(1) Application Fees. Every application for a new NPDES permit or major modification of an existing NPDES permit, every Notice of Intent to be covered by a general permit, and every application for a special order by consent shall be accompanied by a nonrefundable application fee in the amount stated in G.S. 143-215.3D and in accordance with Parts (A)-(D) of this Subparagraph.

(A) Each application or notice of intent shall be considered incomplete until the application fee is received.

(B) For a facility with multiple discharges under a single permit, the application fee shall be set by the single discharge to the waters of the state with the highest applicable fee in the fee schedule.

(C) No application fee shall be charged for modification of unexpired permits when the modifications are initiated by the Director.

(D) No application fee shall be charged for renewal of an existing NDPES permit except that, if the permittee also requests a major modification for new or increased flows or other change that requires a substantial evaluation of permit conditions, such as in Paragraph (c) of this Rule, an application fee for such major modification shall be charged.

(2) Annual Fees. Except as provided in this Subparagraph, an annual fee shall be charged in each year of the term of every NPDES permit, according to the fee schedule in G.S. 143-215.3D.

(A) Annual fees shall be billed each year in the calendar month in which the original permit was issued. The Director may change the billing month at the request of or with the consent of the permittee and shall prorate the ensuing annual fee to account for the added or reduced length of the affected billing period.

(B) When a new permit or major modification requested by the permittee is issued, the application fee shall be accepted as payment for the ensuing annual fee for that permit; if the permit or the modification is not issued, the application fee shall not be refunded.

(C) If an existing permit expires but qualifies for administrative extension under Rule .0112 of this Section, annual fees shall continue to be charged as long as the permit remains in effect.

(D) For a facility with multiple discharges under a single permit, the annual fee shall be set by the single discharge to the waters of the state with the highest applicable fee in the fee schedule.

(E) A person with multiple permits may have annual fees consolidated into one annual bill.

(F) Each application or notice of intent submitted pursuant to Paragraph (a) of this Rule shall be considered incomplete until annual fees due at the time of application, if any, are received by the Division.

(G) Permit Application Fees and Annual Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in G.S. 143-215.3D for NPDES facilities.

(3) No fees shall be 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 is grounds for the Division to initiate action to revoke the permit in accordance with G.S. 143-215.1(b)(4)(c).

(5) Payment of fees shall be made in the form of a check or money order made payable to N.C. Department of Environmental Quality.

(6) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section shall be charged the amount provided in G.S. 143-215.3D for the appropriate general permit.

(c) Engineering Alternatives Analysis. In addition to applications required in Paragraph (a) of this Rule, applicants for NPDES permits for new or expanding discharges requiring construction of water pollution control facilities shall file with the Director two copies of an engineering proposal or, alternatively, one printed copy of the proposal and one complete copy if submitted electronically in accordance with 40 CFR Parts 3 and 127. The proposal shall set forth the following information:

(1) a description of the origin, type and flow of waste that is proposed to be discharged. The proposal shall include a rationale and a demonstration of need for the projected flow volumes. Flow shall be determined in accordance with 15A NCAC 02T .0114;

(2) a summary of the available waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary shall have sufficient detail to establish 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 ensure that the proposed facility has the capability to comply with the permit limits; plans and specifications shall be required with the permit application for any system or component without established treatment capabilities for the type of waste to be treated or the degree of treatment needed to meet the permit limits;

(4) a location map, showing orientation of the facility with reference to at least two geographic references such as numbered roads, named streams and rivers, or landmarks;

(5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;

(6) reports on special studies or modeling in cases where the impacts of the discharge have not yet been determined through computer modeling or other analysis of the proposed discharge; and

(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) In addition to providing applications required in Paragraph (a) of this Rule, applicants for new individual NPDES permits requiring construction of stormwater control facilities shall design and construct the facilities in accordance with criteria set forth in 15A NCAC 02H .1050-.1062 or file an engineering proposal in accordance with Paragraph (c) of this Rule.

(e) Applications for permit renewals.

(1) Applications for permit renewals shall be made by filing the required application form or forms, as listed in Paragraph (a) of this Rule, with the applicable fee, if any, as specified in Paragraph (b) of this Rule, at least 180 days prior to expiration of a permit.

(2) 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.

(3) A residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section.

(4) Authorizations to Construct permits for wastewater control facilities shall 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.

(5) All applications are incomplete until required application fees are received, and incomplete applications may be returned to the applicant.

(f) Applications for permits for pretreatment facilities shall be made upon forms approved by the Director and submitted along with applicable supporting information to the Division of Water Resources. Applications may be submitted in printed form or submitted electronically in accordance with 40 CFR Parts 3 and 127. Applications shall include, at a minimum, the information specified in 15A NCAC 02H .0916.

(g) Applications for permits for new or modified discharges to the surface waters that meet the criteria established in or pursuant to G.S. 113A, Article 1, shall include, in addition to the application forms, fees, and supporting documents required in Paragraphs (a) and (e) of this Rule, an environmental assessment that shall meet the requirements of 01 NCAC 25 .0500. Any assessment that is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Paragraph so long as it considers the potential aquatic impacts of the proposed discharge.

(h) Permits that result in construction of facilities that will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, G.S. 113A. NPDES permit applications for which such documentation is required shall 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 is hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

History Note: *Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); 143-215.3(a); 143-215.3D;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, 1988;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0106 FILING APPLICATIONS

(a) Permit applications shall be filed with the Director, Division of Water Resources. The Director's mailing address is 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 before the date on which the discharge is to commence and, thereafter, at least 180 days before the expiration date of the existing permit. The director may grant permission for a later date on a case-by-case basis.

(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 that 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 or her 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 partner;

(3) in the case of a sole proprietorship, by the proprietor; and

(4) in the case of a municipal, state, or other public entity by either a principal executive officer, 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 Resources 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.

(g) A wastewater treatment facility or treatment unit that is taken out of service but contains waste or residuals that could be discharged to surface waters or otherwise present an environmental or public health risk under foreseeable circumstances, including severe weather events, shall remain subject to NPDES permit requirements until the waste or residuals of concern are disposed in accordance with applicable standards and the permit is rescinded by the Director.

History Note: *Authority G.S. 106-399.4; 143-215.1(b)(3); 143-215.1(c); 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;
Readopted Eff. May 1, 2020.

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 Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of Marine Fisheries, respectively, both of the Department of Environmental Quality, and shall not take final action on such applications until receiving written confirmation that the proposed discharge is acceptable.

(b) The Director shall acknowledge receipt of an NPDES or Authorization to Construct permit application upon verifying that the application is administratively complete, that is, includes the completed and signed application forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees, in accordance with Rules .0105 and .0106 of this Section.

(1) If an application is not administratively complete, the Director shall either return the application to the applicant as incomplete or request the additional information required. If additional information is requested, the applicant shall be given up to 60 days to provide the information to make the application complete.
(2) If technical review of the application reveals that additional information is necessary for staff to evaluate the proposed discharge, the Director shall notify the applicant of the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) The staff shall review the application, supplemental information, and other pertinent information, such as monitoring data, compliance records, special studies, and water quality management plans, and shall make a tentative determination to issue, reissue, deny, modify, revoke, rescind, or deny the permit.

(1) The staff shall conduct a site investigation of each facility prior to making its tentative determination regarding the NPDES permit. On-site investigations shall not be necessary for Authorization to Construct permits, activities covered under general permits, and renewal of individual permits when renewal does not require significant reevaluation of permit conditions such as to address expansion of treatment plant capacity, modification of the wastewater treatment process, or changes in the nature or source of wastewaters to be treated.

(2) If the staff's tentative determination in Subparagraph (1) of this Paragraph 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 description of any other special conditions proposed in the draft permit.

(3) The staff shall organize the determinations made pursuant to Subparagraphs (1) and (2) of this Paragraph into a draft permit.

(d) In the case of permits for which Notice of Intent is given in accordance with Rules .0105 and .0127 of this Section, a Certificate of Coverage under a general permit may be issued directly to the applicant in lieu of any other acknowledgment. If the discharge is not eligible for coverage under the general permit, or if the Notice of Intent is not complete and accompanied by the required application fee, the Notice of Intent shall 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;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0108 FACT SHEETS

(a) For all discharges that do not qualify for a general NPDES permit and that have a total volume of 500,000 or more gallons on any day, a fact sheet providing a summary of the application shall be prepared by the staff and made available upon request following issuance of the public notice provided in accordance with Rule .0109 of this Section. The contents of such fact sheets shall include at least the following information:

(1) a sketch, map, or description of the location of the facility and any waste outlet identified in the application;

(2) a quantitative and qualitative description of the discharge described in the application that 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 Clean Water Act, 33 U.S.C. Section 1251 et seq., the average summer and winter temperatures in degrees Fahrenheit;

(C) the average daily discharge in pounds per day of any pollutants that are subject to limitations or prohibition; and

(D) the type and characteristics of the wastes to be discharged.

(3) the tentative determinations required under Rule .0107 of this Section;

(4) a citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including 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 Rules .0109 and .0111 of this Section;

(B) procedures for requesting a public hearing in accordance with Rule .0111 of this Section, 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, shall 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;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0109 PUBLIC NOTICE

(a) Notice of Application

(1) The Director shall provide public notice of each tentative determination to issue or deny an individual or general NPDES permit as follows:

(A) by publishing the notice one time in a newspaper having general circulation in said county, in accordance with G.S. 143-215.1(c)(2); and

(B) by mailing the notice or transmitting the notice electronically to all persons or agencies listed in Paragraphs (c) and (d) of this Rule.

(2) The notice shall allow at least 30 days for public comment on the draft permit and the proposed final action.

(3) 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) a summary of each applicant's activities or operations that result in the discharge described in the NPDES application;

(D) name of waterway to which each discharge is made and a 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 or general permit;

(F) a summary 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, shall be made available upon request and payment of the cost of reproduction.

(4) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and for Authorizations to Construct shall not be required.

(b) Notice of Public Hearing

(1) The Director shall provide public notice of each public hearing on any NPDES permit application:

(A) by publishing the notice one time in a newspaper having general circulation in said county, in accordance with G.S. 143-215.1(c)(3), provided that, to the extent publication by electronic means is lawful, such publication may be substituted for newspaper publication;

(B) by mailing the notice or transmitting the notice electronically to all persons and government agencies that received a copy of the notice or the fact sheet for the NPDES application; and

(C) by mailing the notice or transmitting the notice electronically to any person or group upon request.

(2) The notice of any public hearing shall include at least the following:

(A) name, address, and phone number of agency holding the public hearing;

(B) name and address of each applicant whose application will be considered at the hearing;

(C) name of waterway to which each discharge is made and a description of the location of each discharge on the waterway;

(D) a 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 hearing;

(F) the purpose of the hearing;

(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 summary of the nature of the hearing including the procedures to be followed. The notice shall also state that additional information is on file with the Department of Environmental Quality, Division of Water Resources, at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal business hours, 8 a.m. to 5 p.m. Copies of the information on file shall be made available upon request and payment of cost of reproduction.

(c) The Director shall also give notice of draft NPDES permits and related public hearings to the following:

(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) any user identified in the permit application of a privately owned treatment works; and

(6) any other federal, state, or local agency upon request.

(d) Mailing Lists. Any person may request to receive copies of all notices required under this Rule, and the Director shall provide such copies to any such person. The Director shall establish and maintain an NPDES mailing list for this purpose. The Director may distribute notices, or otherwise make them available, by electronic means at no charge.

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;
Readopted Eff. May 1, 2020.

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 PUBLIC HEARINGS

(a) Public Hearings:

(1) Any person who desires a public hearing on any NPDES permit application shall submit a request to the Director in accordance with G.S. 143-215.1(c)(3). Any such request or petition for public hearing shall indicate the interest of the party filing such request and the reasons why a hearing is warranted.

(2) The Director shall determine whether a public hearing is warranted in accordance with G.S. 143-215.1(c)(3) and, if a hearing is warranted, shall issue public notice and conduct such hearing for the Commission. The Director may hold one or more hearings to consider an NPDES permit application or to consider a group of related NPDES permit applications, such as for facilities of similar type or location or subject to similar permit requirements.

(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 hearing brought pursuant to this Paragraph shall be held in the geographical area of the proposed discharge except that the Director may choose one or more alternative locations in the interest of facilitating public participation. If two or more hearings are held for a single permit application or for groups of similar applications, the hearings shall be located so as to provide for public participation across the geographical area of the permits.

(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. 143-215.1(c)(1); 143-215.1(e); 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; November 1, 1987;
Readopted Eff. May 1, 2020.

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

(a) The Director shall take final action on all NPDES applications in accordance with G.S. 143-215.1(c)(4). In the case of an Authorization to Construct permit, the Director shall take final action within 90 days after the receipt of a complete application; or, if a public hearing is held concerning the Authorization to Construct, within 90 days following the closing of the record of the hearing.

(b) The Director shall:

(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) rescind a permit upon request by the permittee; or

(5) 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.; and

(E) for any point discharge that 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) No permit may be issued until the applicant provides sufficient evidence to 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) Duration of Permits. NPDES permits shall be issued or renewed for a period not to exceed five years.

(e) Continuation of expiring permits. Notwithstanding Paragraph (d) of this Rule, the conditions of an expired permit shall remain effective and enforceable until the effective date of a new permit, or until otherwise terminated, if:

(1) the permittee has submitted a timely and complete application under Rule .0106 of this Section; and

(2) the Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(f) Enforcement. When the permittee is not in compliance with the conditions of the expiring or expired permit, the Director may act in accordance with 40 CFR 122.6(c), which is hereby incorporated by reference, including all subsequent amendments or editions, or take any action authorized by Article 21 of Chapter 143 of the North Carolina General Statutes.

History Note: *Authority G.S. 143-214.2(a); 143-215; 143-215.1(b); 143-215.1(c)(4); 143-215.1(c)(5); 143-215.2(a); 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, 1984;
Readopted Eff. May 1, 2020.

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 for the denial and the changes required to obtain the permit.

History Note: *Authority G.S. 143-215.1(a); 143-215.3(a)(1); 143-215.3(a)(4);*
Eff. February 1, 1976;
Amended Eff. October 1, 1987;
Readopted Eff. May 1, 2020.

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 all facts;
(3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge;
(4) refusal of the permittee to permit the Director or his or her 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 permit fee in accordance with Rule .0105 of this Section.

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as set forth in this Section for 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 permit fee; and
(7) minor modifications, such as typographical errors, incorrect maps, and similar minor changes.

History Note: *Authority G.S. 143-215.1(b)(3); 143-215.3(a)(1);*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; September 1, 1988; November 1, 1987;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0115 PUBLIC ACCESS TO RECORDS

(a) All materials, including records, reports, data, maps, diagrams, draft or final permits, fact sheets, or other documents or information and any public comments, in printed or electronic form, submitted to the Commission, the Secretary, or the Director are public records in accordance with Section 143-215.3C and Chapter 132 of the General Statutes and 40 CFR 122.7(b)-(c) and are subject to disclosure pursuant to G.S. 132-6 unless the materials qualify as confidential information as defined therein.

(b) The Director shall determine which information is entitled to confidential treatment. In the event the Director determines that such information is entitled to confidential treatment, he or she shall take steps to protect such information from disclosure. He or she shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his or her determination of confidentiality.

(c) Confidentiality of Information. Any request for a determination of confidentiality shall be subject to the following:

(1) Any claim of confidentiality shall be made by marking "confidential" or "trade secret" on each page containing such information.
(2) Until a claim of confidentiality is made, all materials submitted pursuant to the rules of this Section are public records and subject to disclosure in accordance with G.S. 132-1.
(3) Upon receiving a request for confidentiality, the Director shall maintain the affected materials separately from public record documents and shall not disclose the materials unless or until he or she determines in accordance with G.S. 143-215.3C and 132-1.2 and 40 CFR 122.7(b)-(c) that the materials do not qualify as confidential information.
(4) The Director may consult with the EPA Region 4 Administrator regarding whether materials marked as "confidential" or "trade secret" qualify as confidential information.
(5) Upon reviewing a request for confidentiality, the Director shall notify the applicant of his findings. If the Director determines that the materials or any portions thereof do not qualify as confidential information, those portions shall not be released for at least 60 days following the notification of findings. If the applicant files a contested case in response to the Director's decision, the materials shall not be released until conclusion of the contested case and then according to the court's decision. If the Director determines that the materials or any portions thereof qualify as confidential information, the Director shall continue to protect such information from disclosure.

(d) The following information may not be claimed and shall not qualify as "confidential" or "trade secret":
(1) The name and address of any permit applicant or permittee;
(2) Permit applications, including information or data required to be disclosed on the NPDES application forms pursuant to Rule .0105 of this Section or in printed or electronic attachments or appendices to such NPDES application forms; and
(3) Permits and effluent data.

History Note: *Authority G.S. 132-6; 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 143-215.3C; 143-215.65;*
Eff. February 1, 1976;
Amended Eff. March 1, 1993; October 1, 1987;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0116 EMERGENCY PROCEDURES

History Note: *Authority G.S. 143-215.3(a)(8); 143-215.3(a)(12); 143-215.6C; 143-215.13(d);*
Eff. February 1, 1976;
Amended Eff. December 1, 1984; November 1, 1978;
Repealed Eff. May 1, 2020.

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

(a) Staff of the Department of Environmental Quality may 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 these Rules.

(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 02B .0500.

(c) Any person subject to the provisions of G.S. 143-215.1 shall allow the Director or his or her authorized representative:
(1) 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;
(2) to have access to any copy and records required to be kept under terms and conditions of the permit;
(3) to inspect any monitoring equipment or method required in the permit; or
(4) to sample any discharge of pollutants.

History Note: *Authority G.S. 143-215.1(b)(1); 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 143-215.3(a)(7); 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;

Readopted Eff. May 1, 2020.

15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS

Any state NPDES permit shall contain effluent limitations and standards required by 15A NCAC 02B .0400 and the Clean Water Act, which is hereby incorporated by reference including any subsequent amendments and editions. 15A NCAC 02B .0400 contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act (33 USC 1251, et seq.). 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. The state rules can be accessed free of charge at http://www.oah.state.nc.us/rules/. The Clean Water Act (33 U.S.C. 1251, et seq.) can be accessed free of charge at http://www.gpo.gov/fdsys/.

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;
Readopted Eff. May 1, 2020.

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 may delegate any or all of the functions contained in this Section except the following:

(1) denial of a permit application;
(2) revocation of a permit not requested by the permittee;
(3) modification of a permit where initiated by the Division and that does not fall within the exceptions listed in Rule .0114(b) of this Section; or
(4) determination of confidentiality pursuant to G.S. 132 and 143-215.3C.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);
Eff. February 1, 1976;
Amended Eff. March 1, 1993;
Readopted Eff. May 1, 2020.

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

(a) An NPDES Permit issued by the U.S. Environmental Protection Agency shall serve in lieu of a State Permit under Rule .0104 of this Section and G.S. 143-215.1 so long as the Federal Permit remains in effect.

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

History Note: Authority G.S. 143-215.1; 143-215.3(a)(1); 143B-282;
Eff. December 1, 1976;
Amended Eff. December 1, 1984;
Readopted Eff. May 1, 2020.

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)(I)(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 to ensure continued treatment and disinfection where the interruption of such treatment would result in a discharge of insufficient quality to protect the best intended uses of the affected surface waters. The reliability measures shall include the following:

(1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility that mathematical modeling or other analysis determines would impact surface waters if treatment were interrupted, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment;

(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 that has automatic shut-off at power failure and no elevated water storage tanks and has sufficient storage capacity that no potential for overflow exists; or

(ii) can tolerate septic wastewater due to prolonged detention and would not threaten the best intended uses of the affected waters as a result of power failure; or

(c) provided that the waters that would be impacted by a power failure are classified as C Waters, a demonstration by the applicant of:

(i) a history of power reliability that would demonstrate that an alternative power source would not be needed; or

(ii) other measures would 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, such as screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters, unless the applicant can demonstrate that this requirement is not necessary to ensure the reliability of one or more unit processes;

(4) For mechanical facilities with a design capacity equal to or greater than 5.0 MGD and continuous operation, 24 hours per day, seven days per week staffing with each shift staffed by at least one certified wastewater operator unless the applicant can demonstrate that this requirement is not necessary to ensure reliability of its facility;

(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 08G .0201; and

(6) 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 08G .0200 et seq.

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;
Readopted Eff. May 1, 2020.

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

(a) Any person who discharges or proposes to discharge pollutants from a peat mining operation to the surface waters of the state shall apply for, obtain, and comply with an NPDES permit for the discharge per the rules of this Section. Application shall be made to the Division in accordance with Rule .0105 of this Section. The application shall also include the following information:

(1) a list of and copies of all permits required by G.S. 143 215.1 for the project site, or copies of the applications submitted for those permits, including permits for waste disposal for sanitary facilities, on-site power plants, or energy conversion facilities;

(2) supporting information to evaluate compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and documentation of any

proposed deed restrictions, easements, contracts, performance bonds, or other legal mechanisms intended to ensure long term effectiveness of proposed control and mitigation measures; and

(3) other information required by this Rule.

(b) Applicability. The requirements of this Rule shall apply to mining, reclamation, post-reclamation, and related activities at all peat mining operations that have a reasonable potential to cause or contribute to the violation of water quality standards or loss of designated uses in estuarine nursery areas or any other downstream waters. 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. Estuarine nursery areas include:

(1) all Primary and Secondary Nursery Areas as designated by the Marine Fisheries Commission or the Wildlife Resources Commission;

(2) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries; and

(3) 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 freshwater bodies unless:

(A) evaluations based on dye tracer studies, computer modeling, or other analyses indicate that the drainage will not cause or contribute to impairment of those estuarine nursery areas; or

(B) the discharge is approved in advance by the Marine Fisheries Commission or Wildlife Resources Commission, whichever established the designation.

(2) If the evaluation in Subparagraph (1) or other analyses indicate that the drainage could flow into estuarine nursery areas or other downstream waters identified per Paragraph (b) of this Rule, the project shall be designed such that the total annual water released from the site does 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 developed 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 management techniques, such as basins, that moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Subparagraph, 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 as of September 1, 1986, 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 modeling techniques for evaluating "undrained" conditions are not available. Water management systems shall be designed to meet the flow control requirements of this Paragraph utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering the historic range of rainfall conditions. At no time shall flows exceed those expected under conditions existing at the time of permit issuance.

(3) Peat mining projects shall comply with the flow restrictions in Subparagraph (2) within four years of permit issuance and must show yearly improvements in runoff volumes as stipulated in the project plan.

(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. However, more stringent conditions may be established if monitoring, modeling or other quantitative methods indicate that the nutrient discharges would result in:

(1) growths of microscopic vegetation such that chlorophyll a values are greater than the applicable standard established in 15A NCAC 02B .0200; or

(2) growths of microscopic or macroscopic vegetation that impair the intended best usage of the waters.

Peat mining projects shall comply with the nutrient restrictions in this Paragraph within four years of permit issuance and must show yearly improvements in nutrient loadings as outlined in the project plan.

(e) Sediment. Best management practices, including settling basins on field ditches, shall 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 to ensure that receiving waters conform to surface water quality standards and controls in 15A NCAC 02B .0200.

(f) Other pollutants. The characteristics of the drainage water leaving the site must be described for all phases of the project. Any substances that may be discharged during some phase of the project, including those in runoff or leachate from on-site storage of peat or ash, must be identified and their potential impacts evaluated. The application shall include the results of the characterization and evaluation and shall describe the measures that will be taken to comply with the water quality standards and to protect the uses of the receiving waters.

(g) Quantitative methods of analysis. Modelling or other quantitative methods of analysis shall be used to determine the effectiveness of proposed pollution control measures and shall, at a minimum, meet the following requirements:

(1) All factors that 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 individual 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 assumptions made 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 comply with flow, nutrient, or other control requirements 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 that 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) In order to evaluate the performance of the proposed system under all anticipated conditions, various methods of analyses shall 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. A discharge to a wetland or swamp shall not cause or contribute to the violation of water quality standards or loss of designated uses in these waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, including any subsequent amendments and editions. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. 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 and define where water quality standards and uses must be protected. The application shall include 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 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 shall also be evaluated. A description of the means of diffusion to provide sheet flow shall be provided. 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 shall be evaluated in order to determine if the project will comply with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina.

(j) Effects on adjacent landowners. Hydrologic and other alterations shall not cause or contribute to the loss of designated uses in waters of the state. The applicant shall prepare a description of the project and summary of the expected impacts on water quality and uses, send a copy to each adjacent landowner, and attach a copy of the document and any responses to the permit application.

(k) Assurance of continued operation. The permit application shall identify how the applicant will ensure the continued operation and maintenance of water control systems during peat mining operations and lasting until completion of reclamation activities in order to protect water quality. These mechanisms shall include paying for the

costs of operating and maintaining the system. These assurances shall be provided by current owners and shall be required through all changes in ownership until reclamation is completed. 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 shall be described for each phase of the project, including the period after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must comply with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels in existence 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.

(1) For the purposes of this Rule, the characteristics of a treatment system are that the structure:

(A) is manmade and intended to be utilized for water management and water pollution control;

(B) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;

(C) has controls at the outlets so water may flow out but, under normal hydrological conditions, not into the structure or facility through the outlet(s); and

(D) 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.

(2) Waters within a treatment system are not subject to water quality standards. However, if an impoundment lagoon, canal, ditch, or other treatment unit has all of the characteristics of a treatment system listed in Subparagraph (1), and if the public utilizes the waters within the treatment system, such as for fishing, the Commission may include conditions in the facility's permit that support the continued utilization of the waters, provided that such conditions are consistent with the provisions of this Section.

(n) Identification of outlet points. Waters downstream from an outlet point must be protected to meet the water quality 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 shall 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 shall not be obstructed by any landowner without approval and a permit modification by the Commission in accordance with the rules of this Section; and

(4) outlet designations may require reconsideration of the classification of the waters consistent with 15A NCAC 02B .0100-.0200.

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;
Readopted Eff. May 1, 2020.

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 as described in Paragraph (d) of this Rule.

(b) General permits shall be issued in accordance with G.S. 143-215.1, using the procedures specified in this Section for individual NPDES permits, including those for application and public notice.

(c) Each general permit shall establish conditions that apply to all discharges covered by the permit, such as effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit.

(d) General permits may be issued for discharges from categories or subcategories of minor activities such as the following:

(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) single-family residences;
(13) other minor activities, provided that their discharges:
    (A) involve the same or substantially similar operations;
    (B) have similar discharge characteristics;
    (C) require the same effluent limitations or operating conditions; and
    (D) require the same or similar monitoring.

(e) General permits shall only be granted for discharge into waters classified either WS or SA following review and approval by the Shellfish Sanitation Program, Division of Marine Fisheries, and the Public Water Supply Section, Division of Water Resources, both of the Department of Environmental Quality. For the purposes of this Rule, "approval" means that the Program or Section either determines that the proposed discharge is acceptable pursuant to its regulations or specifies the conditions under which the discharge would be acceptable.

(f) Notwithstanding any provision of a general permit, permittees shall not violate state water quality standards or other applicable environmental standards.

(g) General permits shall be effective for a term not to exceed five years.

(h) Upon issuance of a general permit, any person may request coverage under the permit by completing and submitting to the Director a Notice of Intent that establishes its eligibility for coverage. The Notice of Intent shall be submitted using forms provided by the Division on the Division's website at https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/npdes-wastewater/npdes-permitting-process-1 in accordance with this Rule and applicable application procedures and fee specified in Rules .0105 and .0106 of this Section.

(i) The Notice of Intent shall include the following:

(1) name and address of owner and operator;
(2) location of the facility or site;

(3) nature of the business or regulated entity and of its operations and production processes;
(4) other permits held by the applicant:
(5) description of the type of discharge and its characteristics;
(6) description of treatment provided;
(7) outfall locations;
(8) for new or proposed discharges, a scale map, such as a 7.5 minute series USGS topographic map or copy of a portion thereof, showing the location of the facility and its outfalls;
(9) receiving stream name and classification;
(10) certification and signature of the applicant;
(11) supporting documentation; and
(12) other information, as specified in the general permit, necessary to determine the impacts of the discharge and its eligibility for the general permit;

(j) If a Notice of Intent is submitted in accordance with Paragraphs (h) and (i) of this Rule, the Director shall grant coverage under the general permit by issuing a Certificate of Coverage that specifies the general permit, the applicant's name and address, the name or type of facility, the issuance date of the Certificate, its effective date, and its expiration date, if any. If all requirements are not met, or if the Director determines the activity does not satisfy the eligibility criteria established in the general permit, the Director shall notify the applicant in writing, and the applicant shall submit an application for an individual permit.

(k) Dischargers that receive a Certificate of Coverage shall be authorized to discharge subject to the terms and conditions of that general permit and payment of an annual fee in accordance with Rules .0105 and .0106 of this Section.

(l) Dischargers covered by general permits are not required to submit new Notices of Intent or renewal requests unless so directed by the Division, such as may occur if eligibility criteria for permit coverage are modified.

(m) All previous state water quality permits issued to a facility that can 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.

(n) Any person covered or considering coverage under a general permit may choose to pursue an individual permit for any facility subject to the rules of this Section.

(o) 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 for an individual permit 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) a determination that the discharge is not consistent with that of a "minor activity" as set forth in G.S. 143-215.1(4)(d.);
(2) a change in conditions at the permitted site that alters 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;
(5) a change in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
(6) promulgation of effluent limitations for the point sources covered by the general permit;
(7) approval of a water quality management plan containing the requirements applicable to such point sources 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;
(9) a determination that the discharge is no longer eligible for coverage under the general permit; or
(10) a decision by the Division to not renew the general permit.

(p) Any interested person may petition the Director in writing to take an action in accordance with this Rule to require an individual NPDES permit. The petition shall identify the affected facility, the applicable general permit, the action proposed, and the rationale for the action. The Director shall acknowledge receipt of the petition and shall provide his or her decision in the matter in writing to the petitioner and the affected permittee.

(q) 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;
Readopted Eff. May 1, 2020.

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

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) Authorization Required.

(1) After an NPDES permit has been issued by the Division of Water Resources 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 Water Resources, except as provided in Subparagraph (2) of this Paragraph.

(2) No Authorization to Construct shall be required for facilities intended to treat principally waste or sewage from an industrial facility whose discharge is authorized pursuant to an NPDES permit.

(3) 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 shall be considered void upon expiration and future actions shall be considered as a new application.

(b) Application. The applicant for an Authorization to Construct shall submit two printed and signed copies and one electronic copy of each of the following:

(1) A completed and signed ATC Application Form. The form is available at no cost on the Division's website at https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/npdes-wastewater/authorization-to-construct. The signature of the consulting engineer or other agent shall be accepted as representing the permittee on the application only if accompanied by a letter of authorization from the permittee. The application form shall include the following information:

(A) Applicant's name, title, and contact information;
(B) Professional Engineer's name and contact information;
(C) Facility name and NPDES permit number;
(D) Project description;
(E) Project design information;
(F) Flows used for project design;
(G) Effluent quality used for project design;
(H) Summary of unit treatment processes and equipment;
(I) Setback of wastewater treatment/storage units required per 15A NCAC 02T .0506(b);
(J) Application certification signed by the professional engineer; and
(K) Application certification by the Applicant.

(2) Plans and specifications. Signed, sealed, and dated engineering plans and specifications for the proposed facilities or facility modifications.

(3) When a permittee proposes to cease operation of its wastewater treatment facility, it shall verify that its wastewater flows will first be connected to a wastewater district or municipal system with sufficient capacity to treat the added flows.

(4) Documentation of the approval of a Sedimentation and Erosion Control Plan if it is required by the Division of Energy, Mineral and Land Resources or a delegated local government Sediment and Erosion Control Program.

(5) Documentation that a 110 volt power source and a potable water supply, equipped with backflow prevention, are available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, the applicant may request and the Director may grant an exception. if the applicant documents how it will provide the necessary power and potable water at the facility.

(6) For those wastewater disposal facilities that have the potential to cause a contravention of groundwater standards, hydrogeologic information as specified in Rule 15A NCAC 02T .0504.

(7) A residuals management plan, if the wastewater treatment system generates residuals. The plan must include the following:

(A) An 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. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage shall be required on all facilities, except that the Director may waive this requirement on a case-by-case basis if the applicant demonstrates that this amount of storage is not necessary to prevent impacts to water quality and the public health. 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 shall be issued unless the application package includes a commitment for the acceptance of the residual from a residuals management site approved in accordance with 15A NCAC 02T .0105 and .1109 and demonstrates that the approved site has adequate capacity to accept the residuals.

(8) A construction sequence plan for any project that will modify existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.

History Note: *Authority G.S. 143-215.1(a6); 143-215.1(c)(1);*
Eff. October 1, 1987;
Amended Eff. August 1, 2012; March 1, 1993; August 3, 1992;
Readopted Eff. May 1, 2020.

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 15A NCAC 02T .0114 and .0805. 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 1,000 gallons per day or less;

(2) the plans and specifications are prepared by the homeowner, and contain all information needed to evaluate the proposed facility pursuant to Rule .0138 of this Section; and

(3) the effluent limitations are at least as stringent as for secondary treatment.

History Note: *Authority G.S. 143-215.1(c)(1);*
Eff. October 1, 1987;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0140 CERTIFICATION OF COMPLETION

(a) Notwithstanding Paragraph (c) of this Rule, prior to operation of any treatment works or disposal system permitted in accordance with this Section, the permittee shall provide the signed and sealed certification of a professional engineer that the treatment works or disposal system has been installed in accordance with the Authorization to Construct and the approved plans and specifications.

(b) For facilities with phased construction or where there is a need to operate equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification.

(c) 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;
Readopted Eff. May 1, 2020.

15A NCAC 02H .0141 OPERATIONAL AGREEMENTS

(a) 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:

(1) provide evidence to show that the applicant has been designated as a public utility by the State Utilities Commission; or

(2) enter into an operational agreement with the Division of Water Resources.

(b) The requirement for assurance of financial solvency shall be made on a case by case determination.

History Note: Authority G.S. 143-215.1(d1);
Eff. October 1, 1987;
Readopted Eff. May 1, 2020.

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

History Note: Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);
Eff. August 1, 1988;
Repealed Eff. May 1, 2020 (S.L. 2005-454, §8, effective January 1, 2006).

15A NCAC 02H .0143 INCORPORATION BY REFERENCE

(a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference, including subsequent amendments and editions, and shall apply throughout this Section except where procedural details of the federal regulations differ from procedures adopted elsewhere in this Section, in which case these Rules shall apply. These regulations can be accessed free of charge at http://www.gpo.gov/fdsys/.

(1) 40 CFR 122.2, 124.2, and 125.2: Definitions;
(2) 40 CFR 122.4: Prohibitions):
(3) 40 CFR 122.5 (a) and (b): Effect of permit;
(4) 40 CFR 122.7 (b) and (c): Confidential information;
(5) 40 CFR 122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
(6) 40 CFR 122.22: Signatories;
(7) 40 CFR 122.23: Concentrated animal feeding operations;
(8) 40 CFR 122.24: Concentrated aquatic animal production facilities;
(9) 40 CFR 122.25: Aquaculture projects;
(10) 40 CFR 122.26: Storm water discharges;
(11) 40 CFR 122.27: Silviculture;
(12) 40 CFR 122.28: General permits;
(13) 40 CFR 122.29 (a), (b), and (d): New sources and new dischargers;
(14) 40 CFR 122.30: NPDES stormwater regulations for small MS4s: objectives;
(15) 40 CFR 122.31: NPDES stormwater regulations: role of Tribes;
(16) 40 CFR 122.32: NPDES stormwater regulations for small MS4s: applicability;
(17) 40 CFR 122.33: NPDES stormwater regulations for small MS4s: application for permit;

(18) 40 CFR 122.34: NPDES stormwater regulations for small MS4s: permit requirements;
(19) 40 CFR 122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
(20) 40 CFR 122.36: NPDES stormwater regulations for small MS4s: compliance;
(21) 40 CFR 122.37: NPDES stormwater regulations for small MS4s: evaluation;
(22) 40 CFR 122.41 (a)(1) and (b) through (n): Applicable permit conditions;
(23) 40 CFR 122.42: Conditions applicable to specified categories of permits;
(24) 40 CFR 122.43: Establishing permit conditions;
(25) 40 CFR 122.44: Establishing NPDES permit conditions;
(26) 40 CFR 122.45: Calculating permit conditions;
(27) 40 CFR 122.46: Duration;
(28) 40 CFR 122.47 (a): Schedules of compliance;
(29) 40 CFR 122.48: Monitoring requirements;
(30) 40 CFR 122.50: Disposal into wells;
(31) 40 CFR 122.61: Permit transfer;
(32) 40 CFR 122.62: Permit modification;
(33) 40 CFR 122.64: Permit termination;
(34) 40 CFR 124.3 (a): Application for a permit;
(35) 40 CFR 124.5 (a), (c), (d), and (f): Modification of permits;
(36) 40 CFR 124.6 (a), (c), (d), and (e): Draft permit;
(37) 40 CFR 124.8: Fact sheets;
(38) 40 CFR 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
(39) 40 CFR 124.11: Public comments and requests for hearings;
(40) 40 CFR 124.12 (a): Public hearings;
(41) 40 CFR 124.17 (a) and (c): Response to comments;
(42) 40 CFR 124.56: Fact sheets;
(43) 40 CFR 124.57 (a): Public notice;
(44) 40 CFR 124.59: Comments from government agencies;
(45) 40 CFR 124.62: Decision on variances;
(46) 40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D (Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures, Existing Facilities, CWA Section 316(b)), M (Ocean Discharge Criteria), and N (Cooling Water Intake Structures, Offshore Oil and Gas Facilities, CWA Section 316(b));
(47) 40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation), and Subchapter N (Effluent Guidelines and Standards);
(48) 40 CFR Parts 3 (Electronic Reporting) and 127 (NPDES Electronic Reporting);
(49) 40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
(50) 40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).

(b) This Rule is not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the Section incorporate some of these same federal regulations for clarity or emphasis and may incorporate additional regulations not listed in Paragraph (a) of this Rule.

History Note: *Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);*
Eff. May 1, 2020.

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.

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)(I); 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)(l);
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)(l); 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)(l);*
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
15A NCAC 02H .0402 APPLICABILITY
15A NCAC 02H .0403 DEFINITION OF COASTAL AREAS
15A NCAC 02H .0404 FACILITY LOCATION AND DESIGN
15A NCAC 02H .0405 PRIVATELY OWNED INSTALLATIONS
15A NCAC 02H .0406 PUBLICLY OWNED SEWERAGE FACILITIES
15A NCAC 02H .0407 EXCEPTIONS FROM REQUIREMENTS

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;
Repealed Eff. May 1, 2020.

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 APPLICABILITY AND DEFINITIONS

(a) This Section outlines the application and review procedures for activities that require State water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required for a federally permitted or licensed activity including, but not limited to, the construction or operation of facilities, which may result in a discharge into navigable waters. Failure to obtain a required certification is enforceable by the Department pursuant to Chapter 143, Article 21, Part 1.

(b) Water quality certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

(1) Individual certifications shall be issued on a case-by-case basis using the procedures outlined in this Section.

(2) General certifications may be developed by the Division and issued by the Director for specific types or groups of activities that are similar in nature and considered to have minimal impact. All activities that receive a Certificate of Coverage under a general certification from the Division shall be covered under that general certification. When written approval is required in the general certification, the application and review procedures for requesting a Certificate of Coverage under a general certification from the Division for the proposed activity are the same as the procedures outlined in this Section for individual certifications.

(c) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:

(1) "Certification" means the State water quality certification pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341).

(2) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.

(3) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.

(4) "Cumulative impact" means 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.

(5) "Department" means the Department of Environmental Quality and the Secretary of the Department of Environmental Quality.

(6) "Director" means the Director of the Division.

(7) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

(8) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.

(9) "Wetland" means the term as defined in 15A NCAC 02B .0202.

History Note: Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L 2017, c. 145, s. 2(b);
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996;
Readopted Eff. June 1, 2019.

15A NCAC 02H .0502 FILING APPLICATIONS

(a) Any person needing issuance of an individual water quality certification or Certificate of Coverage under a general certification required by this Section and Section 401 of the Clean Water Act shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617 or 512 N. Salisbury Street, Raleigh, NC 27604, one complete copy of an application for certification or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application shall be made on a form provided or approved by the Division or the U.S. Army Corps of Engineers, available

electronically via the following website: https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application. The application shall include at a minimum the following:

(1) the date of application;

(2) the name, address, and phone number of the applicant. If the applicant is not the property owner(s), the name, address, and phone number of the property owner(s);

(3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;

(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) a description of the type of waste treatment facilities, if applicable;

(9) a map(s) or sketch(es) with a scale(s) and a north arrow(s) that is legible to the reviewer and of sufficient detail to delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying out the activity; the location, dimensions, and type of any structures erected or to be erected on the lands for use in connection with the activity; and the location and extent of the receiving waters, including wetlands within the boundaries of the lands;

(10) an application fee as required by G.S. 143-215.3D(e); and

(11) a signature by the applicant for the federal permit or license or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge.

(b) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a water quality certification or certificate of coverage under a general certification upon receipt by the Division from the Division of Coastal Management.

(c) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .0506 of this Section.

(d) 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, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a), (b) and (c) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(e) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .0506 of this Section. The applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of credentials.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(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;
Readopted Eff. June 1, 2019.

15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed General Certifications. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website:

https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices. Notice shall be made at least 30 calendar days prior to issuance of the General Certification by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a General Certification.

(b) Notice of each pending application for an individual certification shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice shall set forth:

(1) the name and address of the applicant;
(2) the action requested in the application;
(3) the nature and location of the discharge; and
(4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) The public notice requirement for an individual certification as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

(e) Any person who desires a public hearing on a General Certification or an individual certification application shall so request in writing to the Division at the address listed in Rule .0502 of this Section. The request must be received by the Division within 30 calendar days following the Public Notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and shall email copies of notices to all persons on the list.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(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 02H .0502 Eff. October 1, 1996;
Amended Eff. October 1, 1996;
Readopted Eff. June 1, 2019.

15A NCAC 02H .0504 HEARING

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;
Repealed Eff. June 1, 2019.

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) NO WRITTEN CONCURRENCE REQUIRED. Applicants shall request a Certificate of Coverage under a general certification by submitting an application to the Division unless that general certification states that written concurrence from the Division is not required. When written concurrence is not required, the activities shall be deemed certified if all of the conditions of the general certification are followed and may proceed without the review procedures outlined in Paragraph (b) of this Rule.

(b) EVALUATION. The Division shall issue an individual certification or a "Certificate of Coverage" under a general certification upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

(1) has avoided and minimized impacts to surface waters and wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;
(2) would cause or contribute to a violation of water quality standards;
(3) would result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of water quality standards;
(4) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule;
(5) for Class SWL wetlands, is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement; and
(6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

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

(1) The Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project;
(2) Total impacts to less than one-tenth of one acre of Class WL and Class SWL wetlands for the entire project shall not require compensatory mitigation;
(3) All impacts to Class UWL wetlands shall require compensatory mitigation;
(4) Total impacts to less than 300 linear feet of perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per perennial stream shall not require compensatory mitigation;
(5) The ratio of mitigation required to classified surface waters or wetlands impacted is 1:1. The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multiplier ratios shall not apply to approved mitigation sites where the Interagency Review Team (insert CFR reference) has approved other ratios;
(6) Mitigation shall comply with the requirements set forth in G.S. 143-214.11;
(7) Acceptable methods of mitigation, as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement, and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2), (3) or (4) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation.
(8) Mitigation for impacts to classified surface waters and wetlands shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at:

http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director;

(9) Mitigation for impacts to Class SWL wetlands shall be of the same wetland type (Class SWL wetlands);

(10) Mitigation for impacts to wetlands designated in Subparagraph (b)(6) of this Rule shall be of the same wetland type and within the same watershed when practical; and

(11) Mitigation for impacts to surface waters classified as WS-I, WS-II or WS-III and wetlands adjacent to waters classified as WS-I, WS-II or WS-III shall be within the same water supply watershed when practical.

History Note: *Authority G.S. 143-211(c); 143-214.7C; 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L. 2015-286; S.L. 2017-10;*
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996;
Readopted Eff. June 15, 2020.

15A NCAC 02H .0507 DECISION ON APPLICATION FOR CERTIFICATION

(a) The Director shall issue the certification, deny the application, provide notice of hearing pursuant to Rule .0503 of this Section, or request additional information within 60 calendar days after receipt of an application for certification. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the certification, deny the application, provide notice of hearing, or request additional information within 60 calendar 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) The final decision is to be made pursuant to a public hearing;

(3) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Director's decision; or

(4) Information necessary for the Director's decision is unavailable.

(b) The Director shall issue the certification, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in a waiver of the certification requirement by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

(c) Any certification issued pursuant to this Section may contain such conditions as the Director shall deem necessary to ensure compliance with Sections 301, 302, 303, 306, and 307 of the Clean Water Act and with State water law. The conditions included in the certification shall become enforceable by the Department pursuant to Chapter 143, Article 21, Part 1 when the federal permit or license is issued.

(d) Modification or Revocation of Certification:

(1) Any certification issued pursuant to this Section may be subject to revocation or modification by the Director for violation of Sections 301, 302, 303, 306, or 307 of the Clean Water Act or State water law.

(2) Any certification issued pursuant to this Section may be subject to revocation or modification by the Director upon a determination that information contained in the application or presented in support thereof is incorrect or if the conditions under which the certification was made have changed.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial. A copy of the notification shall be sent to the appropriate federal licensing or permitting agency and EPA.

(f) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

History Note: *Authority G.S. 143-211(c); 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(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;
Recodifed from 15A NCAC 2H .0504 Eff. October 1, 1996;
Amended Eff. October 1, 1996;

Readopted Eff. June 1, 2019.

SECTION .0600 - AIR QUALITY PERMITS

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

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
15A NCAC 02H .0802 SCOPE

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; November 1, 1978;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002;
Repealed Eff. July 1, 2019.

15A NCAC 02H .0803 DEFINITIONS

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

(1) "Acceptable Proficiency Testing Results" means those results on Proficiency Testing Samples that are within the Vendor-specified acceptable range as indicated by a Vendor or Split Samples that are within the specified acceptance range as provided by the State Laboratory.

(2) "Analytical Chemistry Experience" means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.

(3) "Approved Procedure" means an analytical procedure based upon reference methods found in Rule .0805(a)(1)(A) through (E) of this Section, and approved for use for monitoring subject to G.S. 143-215.1 and 143-215.63 and the rules of this Section. State Laboratory Approved Procedures for Field Parameters may be obtained by request from the State Laboratory or on the State Laboratory Certification website at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch.

(4) "Certification" means a declaration by the State Laboratory that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant comply with these Rules and that the applicant's proficiency with analytical chemistry has been considered and found to be acceptable by the State Laboratory pursuant to these Rules.

(5) "Certified Data" means any analytical result, including the Supporting Records, obtained using a method or procedure pursuant to Rule .0805(a)(1)(A) through (F) of this Section.

(6) "CFR" means the Code of Federal Regulations.

(7) "Commercial Laboratory" means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing samples in a chemistry laboratory or in a field setting, including Field Parameters, for others for a fee.

(8) "Decertification" means loss of Certification.

(9) "Director" means the Director of the Division of Water Resources.

(10) "Division" means the Division of Water Resources.

(11) "Falsified Data or Information" means data or information that, whether by intent or disregard for accuracy, has been altered, fabricated, or otherwise mischaracterized by omission or substitution, such that the value or information reported is incorrect, incomplete, or inaccurate.

(12) "Field Laboratory" means a laboratory, including its agents or employees, that is seeking Certification to analyze or is analyzing samples in a chemistry laboratory or a field setting for Field Parameters only.

(13) "Field Parameters" shall include Total Residual Chlorine, Free Available Chlorine, Conductivity, Dissolved Oxygen, pH, Settleable Residue, Salinity, Sulfite, Turbidity, Temperature, Vector Attraction Reduction Option 5, Vector Attraction Reduction Option 6, and Vector Attraction Reduction Option 12.

(14) "Inaccurate Data or Other Information" means data or information that is in any way incorrect or mistaken.

(15) "Industrial Laboratory" means a laboratory, including its agents or employees, operated by an industry to analyze samples in a chemistry laboratory or in a field setting under the scope of these Rules.

(16) "In-situ" means in the original or natural place or site.

(17) "Matrix Spike" means an additional aliquot of an environmental sample to which a known concentration of the analytes of interest is added before sample preparation, cleanup, and determinative procedures have been implemented. It is used to assess the performance of the method by measuring the effects of interferences caused by the sample matrix and reflects the bias of the method for the particular matrix in question.

(18) "Mobile Laboratory" means a collection of analytical equipment and instruments contained in an environmentally controlled vehicle that can be deployed to a project site for other than Field Laboratory Certification purposes.

(19) "Municipal Laboratory" means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples in a chemistry laboratory or in a field setting under the scope of these Rules. Municipal Laboratories may cost-share among Municipal Laboratories or charge a cost recovery fee or surcharge to operate their Pretreatment Program.

(20) "Other Laboratory" means a facility that is not required to obtain State Laboratory Certification as part of its routine operation and does not analyze samples in a chemistry laboratory or in a field setting for a fee, or is doing business as a non-profit facility.

(21) "Parameter" means the analyte, element, compound, or property being measured.

(22) "Parameter Method" means a type of analytical technique, including materials and tools, used to measure a Parameter.

(23) "Pretreatment Program" means a program of waste pretreatment requirements set up in accordance with 15A NCAC 02H .0900, and approved by the Division.

(24) "Proficiency Testing (PT) Sample" means a performance evaluation sample whose true value is unknown to the laboratory and provided by a State Laboratory-approved Vendor to test whether the laboratory can produce analytical results within the specified acceptance criteria.

(25) "Recertification" means re-instating Certification at the end of the Decertification period imposed by the Division pursuant to Rule .0807 of this Section.

(26) "Reference Temperature-Measuring Device" means a National Institute of Standards and Technology (NIST) traceable temperature-measuring device used only to verify the calibration of other temperature-measuring devices.

(27) "Root Cause" means the originating factor that caused a nonconformance.

(28) "Second Source" means reference solutions from a different manufacturer or from the same manufacturer and identified by a different lot number.

(29) "Split Sample" means two or more representative portions taken from a sample or subsample and analyzed by two or more laboratories approved by the State Laboratory.

(30) "Standard Operating Procedure (SOP)" means a laboratory's analytical or operational procedures, described with sufficient detail to allow someone similarly qualified to reproduce the procedures used to generate the test or desired result.

(31) "State" means the North Carolina Department of Environmental Quality.

(32) "State Laboratory" means the Water Sciences Section, including the Laboratory Certification Branch of the North Carolina Division of Water Resources.

(33) "Supporting Record" means any document or other source of information compiled, recorded, or stored in written form, by electronic process, or in any other manner that provides any information necessary to reconstruct or characterize a reported value.

(34) "Unacceptable Proficiency Testing Results" means those results on Proficiency Testing Samples that do not fall within the Vendor-specified acceptable range as stated by a State Laboratory-approved Vendor, or Split Samples that do not fall within the specified acceptable range as indicated by the State Laboratory, or a failure to meet a reporting deadline imposed by the Vendor or State Laboratory.

(35) "Uncertified Data" means any analytical result, including the Supporting Records, obtained using a method or procedure that is not acceptable to the State Laboratory pursuant to these Rules; analytical results produced by a laboratory for an analysis not within the scope of the rules of this Section; or analytical results produced by a laboratory without proper Certification.

(36) "US EPA" means the United States Environmental Protection Agency.

(37) "Vector Attraction Reduction Option" refers to an option for demonstrating a reduction in vector attraction of sewage sludge listed in 40 CFR 503.33(b)(1) through (b)(12).

(38) "Vendor" means an accredited Proficiency Testing Sample provider recognized by The NELAC Institute (TNI).

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;
Readopted Eff. July 1, 2019.

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

(a) Commercial Laboratories shall obtain Certification for Parameter Methods used to generate data that will be reported by the client to the State in accordance with the rules of this Section. Municipal and Industrial Laboratories shall obtain Certification for Parameter Methods used to generate data that will be reported to the State in accordance with the rules of this Section. Commercial Laboratories shall obtain Certification for Field Parameter Methods used to generate data that will be reported by the client to the State in accordance with the rules of this Section. Municipal and Industrial laboratories shall obtain Certification for Field Parameter Methods used to generate data that will be reported to the State in accordance with the rules of this Section.

(b) Inorganics: Each of the inorganic, physical characteristic, and microbiological analytes 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. One or more analytical methods or Parameter Methods may be listed with a laboratory's certified Parameters. Certifiable inorganic, physical characteristic, and microbiological Parameters are as follows:

(1) Acidity;
(2) Alkalinity;
(3) Biochemical Oxygen Demand;
(4) Bromide;
(5) Carbonaceous Biochemical Oxygen Demand;
(6) Chemical Oxygen Demand;
(7) Chloride;
(8) Chlorine, Free Available;
(9) Chlorine, Total Residual;
(10) Chlorophyll;
(11) Coliform, Fecal;
(12) Coliform, Total;
(13) Color;
(14) Conductivity/Specific Conductance;
(15) Cyanide;
(16) Dissolved Organic Carbon;
(17) Dissolved Oxygen;
(18) Enterococci;
(19) Escherichia Coliform (E. coli);
(20) Flash Point;
(21) Fluoride;
(22) Hardness, Total;

(23) Ignitability;
(24) Surfactants as Methylene Blue Active Surfactants;
(25) Nitrogen, Ammonia;
(26) Nitrogen, Nitrite plus Nitrate;
(27) Nitrogen, Nitrate;
(28) Nitrogen, Nitrite;
(29) Nitrogen, Total Kjeldahl;
(30) Oil and Grease;
(31) Orthophosphate;
(32) Paint Filter Liquids;
(33) pH;
(34) Phenols;
(35) Phosphorus, Total;
(36) Residue, Settleable;
(37) Residue, Total;
(38) Residue, Total Dissolved;
(39) Residue, Total Suspended;
(40) Residue, Volatile;
(41) Salinity;
(42) Salmonella;
(43) Silica;
(44) Sulfate;
(45) Sulfide;
(46) Sulfite;
(47) Temperature;
(48) Total Organic Carbon;
(49) Turbidity;
(50) Vector Attraction Reduction: Option 1;
(51) Vector Attraction Reduction: Option 2;
(52) Vector Attraction Reduction: Option 3;
(53) Vector Attraction Reduction: Option 4;
(54) Vector Attraction Reduction: Option 5;
(55) Vector Attraction Reduction: Option 6;
(56) Vector Attraction Reduction: Option 7;
(57) Vector Attraction Reduction: Option 8; and
(58) Vector Attraction Reduction: Option 12.

(c) Metals: Each of the metals listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable metals are as follows:

(1) Aluminum;
(2) Antimony;
(3) Arsenic;
(4) Barium;
(5) Beryllium;
(6) Boron;
(7) Cadmium;
(8) Calcium;
(9) Chromium, Hexavalent (Chromium VI);
(10) Chromium, Total;
(11) Chromium, Trivalent (Chromium III);
(12) Cobalt;
(13) Copper;
(14) Hardness, Total (Calcium + Magnesium);
(15) Iron;
(16) Lead;
(17) Lithium;

(18) Magnesium;
(19) Manganese;
(20) Mercury;
(21) Molybdenum;
(22) Nickel;
(23) Potassium;
(24) Phosphorus;
(25) Selenium;
(26) Silica;
(27) Silver;
(28) Sodium;
(29) Strontium;
(30) Thallium;
(31) Tin;
(32) Titanium;
(33) Vanadium; and
(34) Zinc.

(d) Organics: Each of the organic Parameters listed in this Paragraph shall be considered a certifiable Parameter. One or more Parameter Methods shall be listed with a laboratory's certified Parameters. Analytical methods shall be determined from the sources listed in Rule .0805(a)(1) of this Section. Certifiable organic Parameters are as follows:

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

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;

Readopted Eff. July 1, 2019.

15A NCAC 02H .0805 CERTIFICATION AND RENEWAL OF CERTIFICATION

(a) Prerequisites and requirements for Certification. The following requirements shall be met by all laboratories, excluding Field Laboratories, prior to Certification. Once certified, failure to comply with any of the following items shall be a violation of Certification requirements.

(1) Laboratory Procedures. Analytical methods, sample preservation, sample containers, and sample holding times shall conform to the requirements found in:

(A) 40 CFR Part 136 and 40 CFR Part 503;

(B) Standard Methods for the Examination of Water and Wastewater;

(C) Test Methods for Evaluating Solid Waste, SW-846, Third Edition;

(D) Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013;

(E) Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH), February 2018, Revision 2.1, and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH), May 2004, Revision 1.1, and

(F) The State Laboratory may develop Approved Procedures for Field Parameters based upon the methods in any of the sources referenced in Parts(a)(1)(A) through (E) of this Rule.

(G) The procedures and methods listed in this Subparagraph are incorporated by reference, including subsequent amendments and editions.

(H) The materials in this Subparagraph are available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina, 27607 or may be obtained from:

(i) The Code of Federal Regulations, 40 CFR Part 136 and 40 CFR Part 503, may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, D.C., 20402 and free of charge at http://www.ecfr.gov.

(ii) Standard Methods for the Examination of Water and Wastewater, is available for purchase from American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, CO 80235; American Public Health Association (APHA), 8001 Street, NW, Washington, D.C. 20001; or Water Environment Federation (WEF), 601 Wythe Street, Alexandria, VA 22314; and http://www.standardmethods.org/.

(iii) Test Methods for Evaluating Solid Waste, SW-846, Third Edition may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 and free of charge at http://www.epa.gov/osw/hazard/testmethods/sw846/online/.

(iv) Control of Pathogens and Vector Attraction in Sewage Sludge; EPA/625/R-92/013 is available from US EPA; Office of Research and Development, Washington, D.C. 20460 and free of charge at http://www.water.epa.gov/scitech/wastetech/biosolids/.

(v) Massachusetts Department of Environmental Protection, Method for the Determination of Volatile Petroleum Hydrocarbons (VPH), February 2018, Revision 2.1, et seq. and Method for the Determination of Extractable Petroleum Hydrocarbons (EPH), May 2004, Revision 1.1, et seq may be obtained from the Massachusetts Department of Environmental Protection, Senator William X. Wall Experiment Station, 37 Shattuck Street, Lawrence, MA, 01843-1398 and free of charge at https://www.mass.gov/files/documents/2018/02/23/VPH%20GC%20PIDFID_Revision%202_1_February%202018.pdf and http://www.mass.gov/eea/docs/dep/cleanup/laws/eph0504.pdf, respectively.

(vi) State Laboratory Approved Procedures for Field Parameters may be obtained by request from the State Laboratory or on the State Laboratory website at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch.

(J) The Commission or assigned delegate may approve other analytical procedures, parameters, or Parameter Methods that produce verifiable and repeatable results.

(2) Proficiency Testing. Annually, each certified laboratory shall achieve Acceptable Proficiency Testing Results on a minimum of one evaluation sample for each Parameter Method listed on their Certified Parameters Listing for which Proficiency Testing Samples are available from more than one Vendor, as required by these Rules. When two Proficiency Testing Samples for the same Parameter Method are analyzed and submitted at the same time, an unacceptable result on one or both samples shall be considered the first unacceptable result for Certification purposes. A laboratory that submits Unacceptable Proficiency Testing Results for two Proficiency Testing Samples for the same Parameter Method submitted at the same time shall analyze a remedial Proficiency Testing Sample to show a return to control and send a description of corrective actions to the State Laboratory that includes the Root Cause of the failure and the corrective actions taken to prevent recurrence. Proficiency Testing samples shall be analyzed in the same manner that routine samples are analyzed using the same staff, sample tracking, sample preparation procedures, analytical methods, standard operating procedures, calibration techniques, quality control procedures, and acceptance criteria.

(A) All laboratories shall participate annually in an evaluation study by analyzing Proficiency Testing Samples obtained from a State Laboratory-approved Vendor as unknowns, and arranging with the Vendor to send the graded results directly to the State Laboratory by the date due. A laboratory that submits Unacceptable Proficiency Testing Results shall analyze a remedial Proficiency Testing Sample using the same Parameter Method to show a return to control and send a description of corrective actions to the State Laboratory that includes the Root Cause of the failure and the corrective actions taken to prevent recurrence.

(B) Laboratories requesting initial Certification or additional Parameter Method Certification shall submit an acceptable Proficiency Testing sample result from the most recent attempt analyzed within the last six months for each Parameter Method for which Proficiency Testing samples are available. Laboratories shall analyze Proficiency Testing samples obtained from a State Laboratory-approved Vendor as unknowns and arrange with the Vendor to send the graded results directly to the State Laboratory. Laboratories that submit two consecutive Unacceptable Proficiency Testing Results for a particular Parameter Method shall then submit two consecutive Acceptable Proficiency Testing results from the most recent attempt analyzed within the six months prior to initial Certification for that Parameter Method.

(C) If Proficiency Testing Samples are not available, Certification for that Parameter shall be based on the on-site inspection, adherence to the approved procedures, and the other requirements in this Section. Analysis of Split Samples may also be required if Proficiency Testing Samples are not available or if analysis of Proficiency Testing Samples is not representative of the entire analytical process.

(3) Supervisory Requirements.

(A) The supervisor of a Commercial Laboratory shall have a Bachelor's degree in chemistry or other science curricula from a college or university recognized as accredited by the U.S. Department of Education, plus two years of laboratory experience in analytical chemistry, or a two-year associate degree in chemistry technology, environmental sciences, or other science curricula from a college, university, or technical institute, recognized as accredited by the U.S. Department of Education, plus four years of experience in analytical chemistry.

(B) The supervisor of a non-Commercial Municipal, Industrial, Mobile, or Other Laboratory shall have a Bachelor's degree in chemistry or other science curricula from a college or university recognized as accredited by the U.S. Department of Education, plus six months of laboratory experience in analytical chemistry or an equivalent combination of education and work experience, or a two-year associate degree in chemistry technology, environmental sciences, or other science curricula from a college or university recognized as accredited by the U.S. Department of Education, plus two years of experience in analytical chemistry or an equivalent combination of education and work experience.

Non-degree supervisors shall have six years of laboratory experience in analytical chemistry or an equivalent combination of education and work experience.

(C) All laboratory supervisors shall be subject to review by the State Laboratory. One person may serve as supervisor of no more than two certified laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and shall be responsible for adherence to all requirements in this Section. The supervisor shall work in the laboratory or contact the laboratory once each day tests, analyses, measurements, or monitoring required under G.S. 143 Article 21 are performed and Supporting Records shall be maintained as evidence of this supervision. If the supervisor will be absent, the supervisor shall arrange for a substitute capable of insuring adherence to all requirements in this Rule. The substitute supervisor shall not be in charge for more than 12 consecutive weeks. Previous laboratory-related performance shall be considered when reviewing the qualifications of a potential laboratory supervisor.

(4) Laboratory Manager. Each laboratory shall designate a laboratory manager and include his or her 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 Certification shall submit an application to the State Laboratory that includes the laboratory name, contact information, EPA laboratory code number, applicable permit number(s), laboratory supervisor information, analytical methods, and equipment. The application may be obtained by request from the State Laboratory or on the State Laboratory website at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch/application-forms. The application fee and the laboratory's quality assurance manual, including Standard Operating Procedures for all requested Parameter Methods, must also be submitted. Separate application and Certification shall be required for each Mobile Laboratory and the applicant shall supply the vehicle make, vehicle identification number, and license number. Separate application and Certification shall be required for all stationary laboratories maintained on properties that do not share a common boundary line, even though operated under the same management; however, separate Certification shall not be required for separate buildings on the same or adjoining grounds. Analysis of Field Parameters away from the physical location of the laboratory shall be permitted without separate Certification. 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, Supplies, and Equipment. Each laboratory requesting Certification shall be maintained so as to ensure the security and integrity of samples. Samples shall be analyzed in such a manner that contamination or error will not be introduced. Each facility shall contain or be equipped with the following:

(A) A source of water that will meet the minimum criteria of the approved methodologies; and

(B) Glassware, chemicals, supplies, and equipment required to perform all tests, analyses, measurements, or monitoring included in its Certification.

(7) Analytical quality assurance and quality control program. Each laboratory shall have a documented analytical quality assurance and quality control program. Each laboratory shall have a copy of each approved test, analysis, measurement, or monitoring procedure being used in the laboratory. Each laboratory shall develop documentation outlining the analytical quality control practices used for the Parameter Methods included in its Certification, including Standard Operating Procedures for each certified Parameter Method. Quality assurance, quality control, and Standard Operating Procedure documentation shall indicate the effective date of the document and be reviewed every two years and updated if changes in procedures are made. Each laboratory shall have a formal process to track and document review dates and any revisions made in all quality assurance, quality control, and Standard Operating Procedure documents. Supporting Records

shall be maintained as evidence that these practices are implemented. The quality assurance, quality control, and Standard Operating Procedure documents shall be available for inspection by the State Laboratory. The following shall be included in each certified laboratory's quality assurance and quality control program. For analysis of Field Parameters, a certified laboratory shall follow the quality assurance and quality control requirements in Subparagraphs (g)(1) through (9) of this Rule.

(A) Unless specified by the method or this Rule, each laboratory shall establish performance acceptance criteria for all quality control analyses. Each laboratory shall calculate and document the precision and accuracy of all quality control analyses with each sample set. When the method of choice specifies performance acceptance criteria for precision and accuracy, and the laboratory chooses to develop laboratory-specific limits, the laboratory-specific limits shall not be less stringent than the criteria stated in the approved method.

(B) If quality control results fall outside established limits or show an analytical problem, the laboratory shall identify the Root Cause of the failure. The problem shall be resolved through corrective action, the corrective action process documented, and any samples involved shall be reanalyzed, if possible. If the sample cannot be reanalyzed, or if the quality control results continue to fall outside established limits or show an analytical problem, the results shall be qualified as such.

(C) Except where otherwise specified in an analytical method, laboratories shall analyze five percent of all samples in duplicate to document precision. Laboratories analyzing fewer than 20 samples per month shall analyze one duplicate during each month that samples are analyzed.

(D) Unless the referenced method states a greater frequency or the parameter is not amenable to spiking, laboratories shall spike five percent of samples monthly. Laboratories analyzing fewer than 20 samples per month shall analyze one Matrix Spike during each month that samples are analyzed.

(E) All analytical records, including original observations and information necessary to facilitate historical reconstruction of the calculated results, shall be maintained for five years. All analytical data and records pertinent to each certified analysis shall be available for inspection upon request. All analytical records shall be legible to all parties and safeguarded against unauthorized amendment, obliteration, erasures, overwriting, and corruption. Records that are stored only on electronic media shall be maintained throughout the five-year retention period and supported in the laboratory by all hardware and software necessary for data retrieval and review. All documentation errors shall be corrected by drawing a single line through the error so that the original entry remains legible. Entries shall not be obliterated by erasures or markings. Wite-Out®, correction tape, or similar products designed to obliterate documentation shall not to be used; instead, the correction shall be written adjacent to the error. The correction shall be initialed by the responsible individual and the date of change documented. All manual data and log entries shall be written in indelible ink.

(F) All laboratories shall use printable laboratory benchsheets. Certified Data shall be traceable to the associated sample analyses and shall consist of:

(i) the method or Standard Operating Procedure;
(ii) the laboratory identification;
(iii) the instrument identification;
(iv) the sample collector;
(v) the signature or initials of the analyst;
(vi) the date and time of sample collection;
(vii) the date of sample analyses;
(viii) the time of sample analyses (when required to document a required holding time or when time-critical steps are imposed by the method, a federal regulation, or this Rule);
(ix) sample identification;
(x) sample preparation, where applicable;
(xi) the volume of sample analyzed, where applicable;
(xii) the proper units of measure;

(xiii) the dilution factor, where applicable;
(xiv) all manual calculations;
(xv) all quality control assessments;
(xvi) the value from the measurement system;
(xvii) the final value to be reported; and
(xviii) any other data needed to reconstruct the final calculated result.

Each item shall be recorded each time that samples are analyzed. The date and time that samples are placed into and removed from ovens, water baths, incubators and other equipment shall be documented if a time limit is required by the method.

(G) If certified for total suspended residue, total dissolved residue, or total residue, laboratories shall analyze one standard monthly during each month samples are analyzed.

(H) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards shall bracket the range of the sample concentrations measured. One of the standards shall have a concentration equal to or less than the laboratory's lowest reporting concentration for the parameter involved. All data sets shall reference the corresponding calibration. Laboratories shall analyze or back-calculate a standard at the same concentration as the lowest reporting concentration each day samples are analyzed. A calibration blank and calibration verification standard shall be analyzed prior to sample analysis, after every tenth sample, and at the end of each sample group, unless otherwise specified by the method, to check for carryover and calibration drift.

(i) The concentration of reagent, method, and calibration blanks shall not exceed 50 percent of the lowest reporting concentration or as otherwise specified by the reference method.

(ii) Laboratories shall analyze one known second source standard to verify the accuracy of standard preparation if an initial calibration is performed and in accordance with the referenced method requirements thereafter.

(iii) For electrode analyses, a series of two or more non-zero standards shall be used.

(iv) For metals analyses, a series of three or more non-zero standards or standards as set forth in the analytical procedure shall be analyzed with each sample set.

(v) For colorimetric analyses, a series of five or more non-zero standards for a curve prepared every 12 months or three or more non-zero standards for curves established each day, or standards as set forth in the analytical procedure, shall be analyzed to establish a calibration curve. A manufacturer's factory-set calibration (internal curve) shall be verified with the same number of standards and frequency as a prepared curve.

(vi) For ion chromatographic analyses, a series of five or more non-zero standards for a curve prepared every 12 months or three or more non-zero standards for curves established each day, or standards as set forth in the analytical procedure, shall be analyzed to establish a calibration curve.

(I) Each day samples are placed into or removed from an incubator, oven, water bath, refrigerator, or other temperature-controlled device, the temperature shall be checked, recorded, dated, and initialed. If a method requires more frequent monitoring, the method shall be followed. During each use of an autoclave, the temperature, pressure, cycle time, and items autoclaved shall be checked, recorded, dated, and initialed.

(J) The analytical balance shall be checked with one ASTM Type 1, Class 1 or 2, or equivalent standard weight each day used. These weights shall be verified every five years. The analytical balance shall be verified monthly with three ASTM Type 1, Class 1 or 2, or equivalent standard weights across the range of use. The values obtained shall be recorded, dated, and initialed. Laboratory analytical balances shall be serviced by a metrology vendor or technician every 12 months to verify that the balance is functioning within manufacturer's specifications.

(K) Chemical containers shall be dated when received and when opened. Reagent containers shall be dated, identified, and initialed when prepared. Chemicals and reagents exceeding the expiration date shall not be used. The laboratory shall have a documented system of traceability for the purchase, preparation, and use of all chemicals, reagents, standards, and consumables.

(L) A record of sample collection date, sample collection time, sample collector, and the use of proper preservatives and preservation techniques shall be maintained. Each North Carolina sample shall indicate the collection site on all record transcriptions.

(M) Sample preservation shall be verified and documented. If a laboratory receives a sample subject to G.S. 143-215.1 and 143-215.63 that does not meet sample collection, holding time, or preservation requirements, the laboratory shall document the incident, notify the sample collector or client, and secure another sample that meets the regulatory requirements, if possible. If another viable sample cannot be secured, the original sample may be analyzed but the results reported shall be qualified with the nature of the sample collection, holding time, or preservation infractions and the laboratory shall notify the State Laboratory of the infractions. The notification shall include a statement indicating corrective action taken to prevent future infractions.

(N) All temperature-measuring devices shall have accuracy that meets or exceeds one-half the tolerance required for its intended use. All temperature-measuring devices shall be used, stored, and maintained according to the manufacturer's instructions.

(i) Reference Temperature-Measuring Devices shall meet National Institute of Standards and Technology (NIST) specifications for accuracy and shall be recalibrated in accordance with the manufacturer's recalibration date not to exceed five years. If no recalibration date is given, the Reference Temperature-Measuring Device shall be recalibrated every five years.

(ii) Excluding digital, incubator, and infrared temperature-measuring devices, all non-Reference Temperature-Measuring Devices shall be verified at the temperature of use every 12 months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.

(iii) Digital temperature-measuring devices and temperature-measuring devices used in incubators shall be verified at the temperature of use every three months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.

(iv) Infrared temperature-measuring devices shall be verified every three months at three different temperatures over the temperature range of use against a Reference Temperature-Measuring Device and their accuracy shall be corrected. Each day of use, infrared temperature-measuring devices shall be verified against a non-Reference Temperature-Measuring Device that meets NIST specifications for accuracy. If the infrared temperature-measuring device does not agree within 0.5 degrees Celsius during the daily verification, the laboratory shall take corrective action.

(O) Mechanical volumetric liquid-dispensing devices (e.g., fixed and adjustable auto-pipettors and bottle-top dispensers) used for critical volume measurements shall be calibrated once every six months.

(P) Each laboratory shall develop and implement a documented training program that includes documentation that:

(i) staff have the education, training, experience, or demonstrated skills needed to generate quality control results within method-specified limits and meet the requirements of these Rules;

(ii) staff have read the laboratory quality assurance manual and applicable Standard Operating Procedures; and

(iii) staff have obtained acceptable results on Proficiency Testing Samples pursuant to Rule .0803(1) of this Section or other demonstrations of proficiency (e.g., side-by-side comparison with a trained analyst, acceptable results on a single-blind performance evaluation sample, an initial demonstration of capability study prescribed by the reference method).

(b) Issuance of Certification.

(1) Upon compliance with these Rules, Certification shall be issued by the Director or assigned delegate, for each of the applicable Parameter Methods requested within 30 calendar days of payment of the initial invoice.

(2) Initial Certifications shall be valid for the remainder of the applicable Certification cycle that begins on January 1 and ends December 31 of the same year.

(c) Maintenance of Certification.

(1) To maintain Certification for each Parameter Method, a certified laboratory shall analyze one Proficiency Testing Sample per Parameter Method per year. A laboratory may be asked to analyze additional Proficiency Testing Samples for a Parameter Method if a question about the accuracy of data produced arises, if there are changes in equipment or personnel, if inaccurate information is reported with Proficiency Testing results, or if Unacceptable Proficiency Testing Results are submitted.

(2) In addition, if a Proficiency Testing Sample is not available, the State Laboratory may request the analysis of Split Samples. Acceptable Split Sample results shall be determined by the State Laboratory using scientifically valid statistical methodology.

(3) The State Laboratory may require certified laboratories to analyze blind Proficiency Testing Samples or Split Samples under direction of State Laboratory personnel if there is a question about the accuracy of data produced, if Proficiency Testing Samples are not available, or if analysis of Proficiency Testing Samples does not represent the entire analytical process.

(4) A certified laboratory shall be subject to periodic announced or unannounced inspections during the Certification period and shall make time and all records pursuant to Part (a)(7)(E) of this Rule available for inspection.

(5) A certified laboratory shall supply copies of all records pursuant to Part (a)(7)(E) of this Rule for any investigation upon written request by the State Laboratory.

(6) A certified laboratory shall provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 calendar days of such changes.

(7) A certified laboratory shall submit written notice of any changes of location, ownership, address, name, or telephone number within 30 calendar days of such changes.

(d) Certification Renewals. Certification renewals shall be issued for one year.

(e) Data Reporting.

(1) Certified Commercial Laboratories shall provide data reports to their clients that are signed by the laboratory supervisor. This signatory authority may be delegated in writing.

(2) If a certified laboratory refers or subcontracts analysis of samples to another laboratory certified for the Parameter, the referring laboratory shall supply the date and time that samples were collected to insure holding times are met. All record transcriptions of subcontracted samples shall state that the collection site is in North Carolina. Laboratories may subcontract sample fractions, extracts, leachates, and other sample preparation products provided that adherence to 15A NCAC 02H .0800 is documented. The initial client requesting the analyses shall receive the original or a copy of the report made by the laboratory that performs the analyses. Each reported result shall be traceable to the laboratory that performed the analysis on the final report.

(3) All Uncertified Data shall be documented as such on the benchsheet and on the final report.

(4) Sample results reported below the lowest reporting concentration, if required by the data receiver, shall be qualified as an estimated value.

(5) Reported data associated with quality control failures, improper sample collection, holding time exceedances, or improper preservation shall be qualified as such.

(f) Voluntary Discontinuation of Certification.

(1) A laboratory may discontinue Certification for any or all Parameter Methods by making a written request to the State Laboratory.

(2) After discontinuation of Certification, a laboratory shall only 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 Laboratory Certification. Laboratories that meet the requirements of this Paragraph shall be certified as Field Laboratories. Once certified, failure to comply with any of the following items shall be a violation of Certification requirements.

(1) All analytical records, including original observations and information necessary to facilitate historical reconstruction of the calculated results, shall be maintained for five years. All analytical data and records pertinent to each certified analysis shall be available for inspection upon request. All analytical records shall be legible to all parties and safeguarded against unauthorized amendment, obliteration, erasures, overwriting and corruption. Records that are stored only on

electronic media shall be maintained throughout the five-year retention period and supported in the laboratory by all hardware and software necessary for data retrieval and review. All documentation errors shall be corrected by drawing a single line through the error so that the original entry remains legible. Entries shall not be obliterated by erasures or markings. Wite-Out®, correction tape, or similar products designed to obliterate documentation are not to be used; instead the correction shall be written adjacent to the error. The correction shall be initialed by the responsible individual and the date of change documented. All manual data and log entries shall be written in indelible ink.

(2) All laboratories shall use printable laboratory benchsheets. Certified Data shall be traceable to the associated sample analyses and shall consist of:

(A) the method or Standard Operating Procedure;
(B) the laboratory identification;
(C) the instrument identification;
(D) the sample collector;
(E) the signature or initials of the analyst;
(F) the date and time of sample collection;
(G) the date of sample analyses;
(H) the time of sample analyses (when required to document a required holding time or when time-critical steps are imposed by the method, a federal regulation, or this Rule);
(I) sample identification;
(J) sample preparation, where applicable;
(K) the volume of sample analyzed, where applicable;
(L) the proper units of measure;
(M) the dilution factor, where applicable;
(N) all manual calculations;
(O) the quality control assessments;
(P) the value from the measurement system;
(Q) the final value to be reported; and
(R) any other data needed to reconstruct the final calculated result.

Each item shall be recorded each time samples are analyzed. Analyses shall conform to methodologies found in Subparagraph (a)(1) of this Rule.

(3) A record of instrument calibration or calibration verification shall be documented and available for inspection upon request.

(4) Laboratory Procedures. Laboratory procedures shall comply with Subparagraph (a)(1) of this Rule. A copy of each analytical method or Approved Procedure and Standard Operating Procedure shall be available to each analyst and available for review upon request by the State Laboratory. Standard Operating Procedure documentation shall state the effective date of the document and shall be reviewed every two years and updated if changes in procedures are made. Each laboratory shall have a formal process to track and document review dates and any revisions made in all Standard Operating Procedure documents. Supporting Records shall be maintained as evidence that these practices are implemented.

(5) Each laboratory shall develop and implement a documented training program that includes the following:

(A) that staff have the education, training, experience, or demonstrated skills needed to generate quality control results within method-specified limits and that meet the requirements of these Rules;
(B) that staff have read the laboratory quality assurance manual or applicable Standard Operating Procedures;
(C) that staff have obtained acceptable results on Proficiency Testing samples pursuant to Rule .0803(1) of this Section or other demonstrations of proficiency (e.g., side-by-side comparison with a trained analyst, acceptable results on a single-blind performance evaluation sample, an initial demonstration of capability study prescribed by the reference method).

(6) Each facility shall have glassware, chemicals, supplies, equipment, and a source of water that meets the criteria of the approved methodologies. Samples shall be analyzed in such a manner that contamination or error will not be introduced.

(7) Chemical containers shall be dated when received and when opened. Reagent containers shall be dated, identified, and initialed when prepared. Chemicals and reagents exceeding the expiration date shall not be used. Chemicals and reagents shall be assigned expiration dates by the laboratory if not given by the manufacturer. If the laboratory is unable to determine an expiration date for a chemical or reagent, a one-year time period from the date of receipt shall be the expiration date unless degradation is observed prior to this date. The laboratory shall have a documented system of traceability for all chemicals, reagents, standards, and consumables.

(8) If quality control results fall outside established limits or indicate an analytical problem, the laboratory shall identify the Root Cause of the failure. The problem shall be resolved through corrective action, the corrective action process documented, and any samples involved shall be reanalyzed, if possible. If the sample cannot be reanalyzed, or if the quality control results continue to fall outside established limits or indicate an analytical problem, the results shall be qualified as such.

(9) All temperature-measuring devices shall have accuracy that meets or exceeds one-half the tolerance required for its intended use. All temperature-measuring devices shall be used, stored, and maintained in accordance with the manufacturer's instructions.

(A) Reference Temperature-Measuring Devices shall meet National Institute of Standards and Technology (NIST) specifications for accuracy and shall be recalibrated in accordance with the manufacturer's recalibration date. If no recalibration date is given, the Reference Temperature-Measuring Device shall be recalibrated every five years.

(B) Excluding digital, incubator, and infrared temperature-measuring devices, all non-Reference Temperature-Measuring Devices shall be verified every twelve months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.

(C) Digital temperature-measuring devices and temperature-measuring devices used in incubators shall be verified every three months against a Reference Temperature-Measuring Device and their accuracy shall be corrected.

(D) Infrared temperature-measuring devices shall be verified every three months at three different temperatures over the temperature range of use against a Reference Temperature-Measuring Device and their accuracy shall be corrected. Each day of use, infrared temperature-measuring devices shall be verified against a non-Reference Temperature-Measuring Device that meets NIST specifications for accuracy. If the infrared temperature-measuring device does not agree within 0.5 degrees Celsius during the daily verification, corrective action must be taken.

(10) Mechanical volumetric liquid-dispensing devices (e.g., fixed and adjustable auto-pipettors and bottle-top dispensers) shall be calibrated at least once every twelve months.

(11) Supervisors of laboratories certified only for Field Parameters shall:

(A) meet the requirements of Part (a)(3)(A) or (a)(3)(B) of this Rule;

(B) possess a chemistry or related degree with two years of related environmental experience or an equivalent combination of education and work experience; or

(C) hold any Water Pollution Control System Operator's Certification as defined by 15A NCAC 08G.

Supervisors shall provide personal and direct supervision of the technical personnel and shall be responsible for adherence to all requirements in this Rule. If the supervisor will be absent, the supervisor shall arrange for a substitute capable of insuring adherence to all requirements in this Rule. The substitute supervisor shall not be in charge for more than 12 consecutive weeks.

(12) A certified Field Laboratory shall be subject to inspections during the Certification period and shall make all records pursuant to this Section available for inspection.

(13) A certified Field Laboratory shall supply copies of all records pursuant to this Section for any investigation upon written request by the State Laboratory.

(14) A certified Field Laboratory shall pay all applicable fees in accordance with Rule .0806 of this Section.

(15) Application. Each Field Laboratory requesting initial Certification shall submit an application to the State Laboratory that includes the laboratory name, contact information, EPA laboratory code number, permit number(s), laboratory supervisor information, analytical methods, and equipment. The application may be obtained by request from the State Laboratory or on the State Laboratory

website at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/laboratory-certification-branch/application-forms-0.

(16) Proficiency Testing. Each certified Field Laboratory shall be in accordance with Subparagraph (a)(2) of this Rule.

(17) Data Reporting. Each certified Field Laboratory shall be in accordance with Paragraph (e) of this Rule.

(18) Issuance of Certification. A Field Laboratory shall be issued Certification in accordance with Paragraph (b) of this Rule.

(19) Maintenance of Certification. A certified Field Laboratory shall submit written notice of any changes in the laboratory supervisor, location, ownership, address, name, and telephone number within 30 days of such changes.

(20) Certification Renewals. Certification renewals of certified Field Laboratories shall be issued in accordance with Paragraph (d) of this Rule.

(21) Discontinuation of Certification. A certified Field Laboratory may discontinue Certification in accordance with Paragraph (f) of this Rule.

(22) Decertification. A certified Field Laboratory may be decertified and must meet all Decertification requirements for infractions in accordance with Rule .0807 of this Section.

(23) Civil Penalties. Civil Penalties may be assessed against a certified Field Laboratory that violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rule .0807 of this Section.

(24) Recertification. A decertified Field Laboratory may 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); 143-215.6A;*
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;
Readopted Eff. July 1, 2019.

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

(a) An applicant for laboratory Certification, excluding those laboratories seeking only Field Parameter Certification, shall submit to the Department of Environmental Quality, Division of Water Resources, Water Sciences Section, a non-refundable fee of three hundred dollars ($300.00) with each application.

(b) Municipal, Industrial, and Other Laboratories shall pay an annual fee of eighty-five dollars ($85.00) for each Parameter as instructed on the invoice; however, the minimum fee shall be one thousand seven hundred fifty dollars ($1,750) per year. Municipal Laboratories may cost-share among Municipal Laboratories or charge a cost recovery fee or surcharge to operate their Pretreatment Program.

(c) Commercial Laboratories shall pay an annual fee of eighty-five dollars ($85.00) for each Parameter as instructed on the invoice; however, the minimum fee will be three thousand five hundred dollars ($3,500) per year.

(d) Prior to receiving initial Certification, a Field Laboratory shall pay the required fee as specified in Paragraph (k) or (l) of this Rule and all other laboratories shall pay the required fee as specified in Paragraph (b) or (c) of this Rule. Excluding Field Laboratories, the Certification fee shall be prorated on a quarterly basis. All Certification renewals shall be due on the first day of January.

(e) Once certified, Field Laboratories shall pay a fifty dollar ($50.00) administrative fee for each Parameter Method added to their Certified Parameters Listing, and all other laboratories shall pay the full annual Parameter fee for each Parameter Method added to their Certified Parameters Listing.

(f) A laboratory decertified for all Parameters shall pay initial Certification fees prior to Recertification.

(g) A laboratory decertified for one or more Parameter Methods shall pay a fee of two hundred dollars ($200.00) for each Parameter Method for which it was decertified prior to Recertification.

(h) Out-of-state laboratories shall reimburse the State for actual travel and subsistence costs incurred by laboratory certification staff to perform inspections, provide technical assistance or investigate complaints. Out-of-state

laboratories shall also be assessed for expenses for an on-site inspection based on the hourly rate of the laboratory certification staff, rounded to the nearest hour and inclusive of preparation time, travel time, and inspection time.
(i) Annual Certification fees shall be due 60 days after receipt of invoice.
(j) A fifty dollar ($50.00) late payment fee shall be paid by Field Laboratories when annual Certification fees have not been paid by the date due. For all other laboratories, a two hundred fifty dollar ($250.00) late payment fee shall be paid when annual Certification fees are not paid by the date due.
(k) Commercial Laboratories analyzing only samples for Field Parameters shall pay an annual fee of three hundred dollars ($300.00) per year.
(l) Municipal, Industrial, and Other Laboratories analyzing only samples for Field Parameters shall pay an annual fee of one hundred fifty dollars ($150.00) per year.
(m) A laboratory that voluntarily discontinues Certification shall pay all applicable Certification fees as specified in Paragraphs (a), (b), (c), (d), (k), and (l) of this Rule prior to regaining Certification.

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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0807 DECERTIFICATION AND CIVIL PENALTIES
(a) Laboratory Decertification. The following infractions may result in a laboratory being decertified pursuant to Paragraph (d) of this Rule for any or all Parameters for up to one year:

(1) Failing to maintain the facilities, records, personnel, equipment, or a quality control program as set forth in these Rules;
(2) Submitting inaccurate data or other information subject to these Rules;
(3) Failing to pay required fees by the date due;
(4) Failing to discontinue supplying data to clients or programs that require monitoring under G.S. 143, Article 21 during periods when a Decertification is in effect;
(5) Failing to submit a Split Sample to the State Laboratory as requested;
(6) Failing to use approved methods of analysis;
(7) Failing to report a change of laboratory supervisor within 30 calendar days;
(8) Failing to report an analysis of required annual Proficiency Testing Samples submitted by a State Laboratory-approved Vendor within the specified time limit;
(9) Failing to allow an inspection by an authorized representative of the State Laboratory;
(10) Failing to supply all records and analytical data requested by the State Laboratory;
(11) Failing to submit a written notification within 30 days of applicable changes pursuant to Rule .0805(a)(6), (a)(7), and (g)(19) of this Section;
(12) Failing to meet requirements for sample holding times and preservation;
(13) Failing to respond to requests for information by the date due;
(14) Failing to comply with any other terms, conditions, or requirements of this Section or of laboratory Certification;
(15) Altering or modifying the laboratory's certificate or Certified Parameters Listing;
(16) Sharing or comparing Proficiency Testing Sample results with other laboratories prior to the study reporting deadline;
(17) Splitting, sending, or subcontracting a Proficiency Testing Sample or a portion of a Proficiency Testing Sample to another laboratory unless the practice represents the routine analysis and reporting scheme utilized by the laboratories;
(18) Knowingly receiving and analyzing any Proficiency Testing Sample or portion of a Proficiency Testing Sample from another laboratory for which the results of the Proficiency Testing Sample are intended for use by that laboratory for initial or continued Certification;
(19) Obtaining or attempting to obtain the assigned value of any Proficiency Testing Sample used to satisfy initial or continued Certification requirements prior to the closing date of the study; and
(20) Failing to correct findings in an inspection report.

(b) Parameter Method Decertification. The laboratory may be decertified pursuant to Paragraph (d) of this Rule for a Parameter Method for:

(1) obtaining two consecutive Unacceptable Proficiency Testing Sample results; or
(2) obtaining two consecutive unacceptable Split Sample results.

(c) Falsified Data. A laboratory that submits Falsified Data or Information may be decertified pursuant to Paragraph (d) of this Rule for all Parameters for up to two years and may be recertified per Rule .0808 of this Section.

(d) Decertification Factors. Decertification for periods up to the maximum, as determined by the Commission or assigned delegate, shall be based on any one or a combination of the factors set forth at G.S. 143B-282.1(b).

(e) Conditions of Decertification.

(1) A laboratory shall not analyze, test, measure, or monitor any samples regulated under G.S. 143, Article 21 by the decertified Parameter Method.
(2) A decertified Commercial Laboratory shall supply written notification of its Decertification to clients that are required to report to the Department of Environmental Quality under G.S. 143, Article 21. Within 30 days of Decertification, the decertified laboratory shall provide the State Laboratory with a list of those clients and copies of the notices sent to each.
(3) A Commercial Laboratory that has received a Parameter Method Decertification shall supply written notification of the Parameter Method Decertification to clients that are required to report to the Department of Environmental Quality under G.S. 143, Article 21. The laboratory may also make arrangements to supply analysis through another laboratory certified by the State Laboratory for the same Parameter(s) during any Decertification period. Within 30 days of Decertification, the laboratory shall supply the State Laboratory with a list of clients involved, copies of the notices sent to each, and the name and Certification number of the certified laboratory to be used during the Decertification period.
(4) A Commercial Laboratory decertified for all Parameters shall not subcontract samples for analyses to other certified laboratories during the Decertification period.
(5) A Municipal or Industrial Laboratory that has received a Parameter Method Decertification shall have samples requiring that Parameter Method analyzed by another laboratory certified by the State Laboratory for the contracted Parameter Method during any Decertification period. Within 30 days of Decertification, the decertified laboratory shall supply the State Laboratory with the name and Certification number of the certified laboratory to be used during the Decertification period.

(f) Civil Penalties. Civil penalties may be assessed against a laboratory that violates or fails to act in accordance with any of the terms, conditions, or requirements of the rules in this Section. Civil penalties up to the maximum may be based on any one or a combination of the factors in Paragraph (d) of this Rule.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A; 143B-282.1(b);*
Eff. February 1, 1976;
Amended Eff. November 2, 1992; December 1, 1984;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. August 1, 2002;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0808 RECERTIFICATION

(a) A laboratory decertified in accordance with Rule .0807(a) of this Section shall be recertified at the end of the Decertification period imposed by the Division pursuant to Rule .0807(a) and (d) of this Section by showing that it has corrected the deficiencies for which it was decertified.

(b) A laboratory decertified for a Parameter Method due to two consecutive Unacceptable Proficiency Testing Results or on two consecutive Split Samples shall be recertified at the end of the 30-day period by completing all of the following:

(1) Report acceptable results on two consecutive Proficiency Testing Samples submitted by a State Laboratory-approved Vendor or report acceptable results on two consecutive Split Samples to the State Laboratory. Recertification samples may be requested from a State Laboratory-approved Vendor at any time within two years from the decertification effective date;
(2) Submit a written request for Recertification;
(3) Supply the State Laboratory with a description of corrective actions that includes the Root Cause of the failure and the corrective action taken to prevent recurrence;
(4) Pay the required fee as specified in Rule .0806(f) or (g) of this Section; and
(5) Meet all the Decertification requirements in accordance with Rule .0807(e) of this Section.

(c) The Division shall treat any laboratory decertified for two years or longer for a Parameter Method as an initial Certification, as set forth in Rule .0805 of this Section.
(d) A laboratory decertified pursuant to Rule .0807(c) of this Section shall be recertified following the Decertification period set by Rule .0807(d) of this Section 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0809 RECIPROCITY
(a) Laboratories certified under certification programs of other states or other certification or accreditation bodies shall be given reciprocal Certification if such programs or certification or accreditation bodies 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, a copy of the last audit report from the certifying body, the laboratory's response to the audit report, the laboratory's scope of accreditation, and applicable regulations from the certifying agency.
(b) Laboratories certified by reciprocity shall pay the applicable fees required by Rule .0806 of this Section.
(c) If a laboratory's certification by another state's program or another certification or accreditation body is discontinued, the State Laboratory shall be notified and 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0810 ADMINISTRATION

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;
Repealed Eff. July 1, 2019.

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" or "CWA") 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 that pass through or interfere with treatment processes in POTWs, may contaminate sewage sludge, or otherwise have an adverse impact on the POTW, its workers, or the environment.
(b) Copies of rules and regulations referenced in this Section may be obtained from the Division of Water Resources, Water Quality Permitting Section, free of charge, at the following locations:

(1) http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/percs/pretreatment-permits; and

(2) the North Carolina Department of Environmental Quality, Division of Water Resources 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.

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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0902 SCOPE

The rules of this Section apply to:

(1) Pollutants from non-domestic sources covered by pretreatment standards that 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 that receive wastewater from sources subject to pretreatment standards; and

(3) Any new or existing source subject to pretreatment standards.

The rules of this Section do not apply to sources that discharge to a sewer that 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0903 DEFINITION OF TERMS

(a) Unless otherwise stated in Paragraph (b) of this Rule, the definitions promulgated by the Environmental Protection Agency and codified as 40 CFR 403.3 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr403_main_02.tpl, free of charge.

(b) For this Section, the following additional definitions shall apply:

(1) "Approval Authority" means the Director of the Division of Water Resources of the North Carolina Department of Environmental Quality, or his or 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 that 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 403.17 for additional requirements;

(4) "Commission" means the Environmental Management Commission of the North Carolina Department of Environmental Quality;

(5) "Control Authority" refers to the POTW if the POTW'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 Environmental Quality, Division of Water Resources;

(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 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" or "IWS" 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 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 services 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 that 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, including an increase in the magnitude or duration of a violation, 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 (LTMP) or Short Term (STMP) as the Division Director determines to be necessary;

(17) "National Pretreatment "Standard," "Pretreatment Standard," or "Standard" means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Clean Water Act that applies to industrial users. This term also includes any prohibitive discharge limits established pursuant to 40 CFR 403.5, categorical standards established under the appropriate subpart of 40 CFR Chapter I, Subpart N or local limit that applies to an industrial user. 40 CFR 403.5, Chapters I and N of Part 405 of Title 40 of the Code of Federal Regulations are hereby incorporated by reference, including any subsequent amendments and editions available free of charge (https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr403_main_02.tpl);

(18) "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 403.15;

(19) "Noncontact Cooling Water" is water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product;

(20) "Non-discharge Permit" is a permit issued by the State pursuant to G.S. 143-215.1(d) for a waste that is not discharged directly to surface waters of the State or for a wastewater treatment works that does not discharge directly to surface waters of the State;

(21) "Pass Through" means a discharge that 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;

(22) "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;

(23) "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 a

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;

(24) "POTW," or "Publicly Owned Treatment Works," means a treatment works as defined by Section 212 of the Clean Water Act, which is owned by a state or municipality. 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, as defined in 15A NCAC 02T .0402, only if it conveys wastewater to a POTW treatment plant. The term also means the municipality, as defined in Section 502(4) of the CWA, that has jurisdiction over indirect discharges to and the discharges from such a treatment works. The municipality 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 municipality may be referred to as a "satellite municipality," a "satellite POTW," or a "satellite POTW organization";

(25) "POTW Director" means the chief administrative officer of the control authority or his or her delegate;

(26) "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 403.6(d). Where wastewater from a regulated process is mixed with unregulated wastewater or with wastewater from another regulated process, the pretreatment limit must be calculated in accordance with 40 CFR 403.6(e);

(27) "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;

(28) "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;

(29) "Sewer Use Ordinance" or "SUO" means the POTW or control authority organization ordinance providing the legal authority for administering the pretreatment program;

(30) "Significant Industrial User" or "SIU" means an industrial user that discharges wastewater into a POTW 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 wastewater;

(B) Contributes process wastewater that 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 403.6 and 40 CFR Chapter I, Subpart N;

(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 (including contributing to violations of the limitation and requirements of the NPDES or non-discharge permit or limiting the POTW's sludge disposal options) or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.3 (l)and (t);

(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 403.3(v)(2) and thus is a non-significant categorical industrial user;

(31) "Significant Noncompliance" or "SNC" is the status of noncompliance of a significant industrial user when one or more of the following criteria are met, or any industrial user that meets the criteria in Parts (C), (D), or (H) of this Subparagraph:

(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 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 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 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 or 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 403.8(f)(1)(vi)(B) to halt or prevent the 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 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;

(32) "Staff" means the staff of the Division of Water Resources, Department of Environmental Quality;

(33) "Upset" means the same as set out in Rule .0914 of this Section and 40 Part 403.16;

(34) "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 to or permitted to enter the POTW; and

(35) "Waters of the State" shall have the same meaning as the terms "waters" as defined in G.S. 143-212.

History Note: *Authority 143-215.3(a)(1); 143-215.3(a)(14);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0904 REQUIRED PRETREATMENT PROGRAMS

(a) The regulations regarding pretreatment program development by the control authority promulgated by the EPA and codified as 40 CFR 403.8(a) through 403.8(e) are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

(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 shall 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);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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

(a) Except where specified differently in this Section, the POTW pretreatment program requirements promulgated by the EPA and codified as 40 CFR 403.8(f) and (g) are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

(b) The implementation of a pretreatment program involves:

(1) updating the SUO;
(2) implementing IWS activities;
(3) updating the HWA;
(4) implementation of the LTMP or STMP;
(5) implementation of compliance activities, including sampling and inspection of significant industrial users;
(6) maintenance of control authority organization description, including staffing and funding information;
(7) implementation or the ERP; and
(8) 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);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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

(a) Except where specified differently in 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 EPA and codified as 40 CFR 403.9 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

(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, as required by 40 CFR 403.8 (f)(1) and Rule .0905 of this Section, along with the attorney's statement. 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 and SUO sections that establish the control authority's authority for regulation within all satellite POTW services areas that 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) as defined in Rule .0903 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 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 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 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 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 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 403.5 and 403.6 and Rules .0909 and .0910 of this Section;

(9) a description (including organization charts) of the control authority that 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 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);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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 specified differently in part of this Section, the approval procedures for control authority pretreatment programs and applications for removal credit authorization promulgated by the EPA and codified as 40 CFR 403.11 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge; 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 its legal authority (SUO or ILA), HWA, LTMP or STMP, ERP, summary of IWS activities, and revisions to the list of 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 of 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 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 or 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 National Pollutant Discharge Elimination System Memorandum of Agreement between the State of North Carolina and the United States Environmental Protection Agency Region 4; and

(4) A pretreatment program revision shall become effective upon written approval of the Division Director, except as follows:

(A) Pretreatment permits shall become effective as set forth in in Rule .0917(d)of this Section; and

(B) The Division shall have 30 days from the receipt of a request for deletion of SIUs from the SIU list to make 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 the notice a plan for the transfer of all relevant program information not in the possession of the Division (such as permit files, compliance files, reports, and permit applications) 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 shall be considered inactive by the Division when 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 shall 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.

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. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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

(a) Except where specified differently with any part of this Section, the regulations regarding the reporting requirements for control authorities and industrial users promulgated by the EPA and codified as 40 CFR 403.8(g) and 403.12 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the

reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

(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 written 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 the Division Director determines is needed to determine compliance with the implementation of the pretreatment program, including 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) A minimum of once each year for all permit-limited parameters including flow, except as follows:

(A) Independent monitoring of the industrial user by the control authority is not required for pollutants that 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, as set forth in 403.8(f)(2)(v)(C), for all permit-limited parameters for a significant industrial user determined by the control authority, subject to approval under Rule .0907 of this Section, to fit the criteria of a middle tier categorical industrial user under 40 CFR 403.12(e)(3); and

(C) For categorical parameters with monitoring waived under 40 CFR 403.12(e)(2), a minimum of once during the term of the applicable significant industrial user pretreatment permit as set forth in 40 CFR 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 rule 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, 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) Laboratory records shall be maintained as set forth in Rule .0805 of this Subchapter.

(g) 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.

(h) 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);*
Eff. March 28, 1980;
Amended Eff. April 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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 EPA and codified as 40 CFR 403.5 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14);*
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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

The regulations regarding national categorical pretreatment standards promulgated by the EPA and codified pursuant to 40 CFR 403.6 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(7); 143-215.1(b); 143-215.3(a)(14);*
Eff. March 28, 1980;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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 EPA and codified as 40 CFR 403.13 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

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);*
Eff. March 28, 1980;

Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987; December 1, 1984;
Readopted Eff. July 1, 2019.

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 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 specifically identifies the information as confidential upon submission and is able to demonstrate 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 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0914 UPSET PROVISION

The upset provision promulgated by the EPA and codified as 40 CFR 403.16 is hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14);*
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0915 NET/GROSS CALCULATION

The net/gross calculation provisions promulgated by the EPA and codified as 40 CFR 403.15 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(14);*
Eff. December 1, 1984;
Amended Eff. March 1, 2011; November 1, 1994; October 1, 1987;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0916 PRETREATMENT PERMITS

(a) All significant industrial users who discharge waste into a POTW 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, 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) the name of industrial user;
(B) the address of industrial user;
(C) the standard industrial classification (SIC) code(s) or expected classification and industrial user category;
(D) the wastewater flow;
(E) the types and concentrations (or mass) of pollutants contained in the discharge;
(F) the products manufactured or services supplied;
(G) a description of existing on-site pretreatment facilities and practices;
(H) the locations of discharge points;
(I) the raw materials used or stored at the site;
(J) a flow diagram or sewer map for the industrial user;
(K) the number of employees; and
(L) the operation and production schedules.

The application shall include a written description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g). The written description shall not be considered part of the permit application and shall not serve as a basis for denial of a permit.

(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;

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 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 403.1(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(g)(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; and

(v) issue permits to industrial users not identified as significant industrial users using procedures prescribed by the control authority;

(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 or her permit application. Notifications of denial shall specify the reasons for the denial and the proposed changes that 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 may be initiated by the control authority or the significant industrial user and shall be subject to the same procedural requirements as the issuance of permits. Permit modification requests made by the significant industrial user must be made in writing and can be by letter or by application form as determined by the control authority.

(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;
Readopted Eff. July 1, 2019.

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

(a) Each control authority shall transmit to the Division copies of all significant industrial user pretreatment permits 30 days prior to the effective date.

(b) Permits and permit renewal submissions to the Division for significant industrial users shall include the supporting information listed in this Paragraph. Permit modification submissions for significant industrial users shall include updated versions of this supporting information listed in this Paragraph, 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 shall consider factors, including 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 to make 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 the Division Director objected to, 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 that shall be taken by the control authority to eliminate the objection, including the effluent limitations and conditions 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 misinterprets any categorical standard or pretreatment regulation or misapplies it 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 Rule .0916 of this Section and this Rule;

(2) if more information is needed to determine whether the permit is adequate, may 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) to the extent feasible within the period of time available, may afford interested persons the opportunity to comment on the basis for the objection.

(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);*
Eff. October 1, 1987;
Amended Eff. April 1, 2011; November 1, 1994;
Readopted Eff. July 1, 2019.

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); 143-215.1(b); 143-215.3(a)(1); 143-215.3(a)(14); 153A-274; 153A-275;*
160A-311; 160A-312;
Eff. November 1, 1994;
Readopted Eff. July 1, 2019.

15A NCAC 02H .0919 BYPASS

The regulations regarding the bypass provisions promulgated by the EPA and codified as 40 CFR 403.17 are hereby incorporated by reference. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a)(1); 143-215.3(a)(14);*

Eff. November 1, 1994;
Amended Eff. March 1, 2011;
Readopted Eff. July 1, 2019.

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

History Note: *Authority G.S. 143-215.3;*
Eff. November 1, 1994;
Amended Eff. April 1, 2011;
Repealed Eff. July 1, 2019.

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

The regulations regarding removal credits promulgated by the EPA and codified as 40 CFR 403.7 are hereby incorporated by reference, including any subsequent amendments and editions. A copy of the reference material can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=002b8fe78be0d299d7289c36ef66652d&mc=true&tpl=/ecfrbrowse/Title40/40CIsubchapN.tpl, free of charge.

History Note: *Authority G.S. 143-215.1(a); 143-215.1(b); 143-215.3(a)(14);*
Eff. November 1, 1994;
Amended Eff. March 1, 2011;
Readopted Eff. July 1, 2019.

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 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); 143-215.2(b); 143-215.3(a)(3); 143-215.3(a)(14); 143-215.6A(j); 143-215.6A(k);*
Eff. April 1, 2011;
Readopted Eff. July 1, 2019.

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;

(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 MS4permit 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-57and 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 permitee'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).

15A NCAC 02H .1041 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 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 of 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 RECEVING 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 aquatic population surveys of water and wastewater as required by G.S. 143-215.3(a) and 15A NCAC 02B .0200 and .0500. These Rules establish an EPA-designated program for the State to implement the Clean Water Act, as set forth in 33 U.S.C. 1318 and 1319.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215(c); 143-215.66;
Eff. October 1, 1988;
Amended Eff. March 1, 1993;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1102 SCOPE

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;
Eff. October 1, 1988;
Repealed Eff. July 1, 2019.

15A NCAC 02H .1103 DEFINITIONS

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

(1) "Approved Procedure" means an analytical procedure developed by the State Laboratory based upon 40 CFR 136.3 and subject to G.S. 143, Article 21, Part 1. A link to the approved procedures can be found at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/aquatic-toxicology-branch/downloads.

(2) "Aquatic population survey and analysis" means field sampling, laboratory identification, analysis, and metric derivation for determining biological integrity, as defined in 15A NCAC 02B .0202 for fish, aquatic macroinvertebrates, phytoplankton, and aquatic macrophytes using methods developed in accordance with 15A NCAC 02B .0103(b).

(3) "Certification" means a declaration by the Division that personnel, equipment, records, quality control procedures, and methodology cited by the applicant complies with the rules in this Section.

(4) "Commercial Laboratory" means any laboratory, including its employees and agents, that analyzes, for others, wastewater samples for toxicity measurements or for their impacts on the receiving waters.

(5) "Decertification" means the loss of certification.

(6) "Director" means the Director of the North Carolina Division of Water Resources.
(7) "Division" means the North Carolina Division of Water Resources.
(8) "Falsified data or information" means data or information that, whether by intent, or disregard for accuracy, has been altered, fabricated, recorded falsely or mischaracterized by omission or substitution.
(9) "Industrial Laboratory" means a laboratory, including its employees and agents, operated by an industrial facility to analyze samples from its wastewater treatment plants for toxicity measurements or impacts to receiving waters or to conduct aquatic population surveys and analysis.
(10) "Proficiency Testing sample" means a performance evaluation sample provided by the State Laboratory or a State Laboratory-approved vendor as defined in 15A NCAC 02H .0803(38), located at https://nelac-institute.org/content/NEPTP/ptproviders.php to a commercial, industrial, or public laboratory as an unknown toxicant for measurement of toxicity, as an unknown analyte for measurement by laboratory equipment or wet chemistry methods, or as an unknown set of preserved organisms for identification to specified levels of taxonomic classification.
(11) "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 to analyze samples from its wastewater treatment plant(s) for toxicity measurements or resultant impacts to receiving waters.
(12) "Split samples" for surface water effluent discharge, surface water, or phytoplankton means two or more representative portions taken from a single sampling device. For aquatic macrophytes or macroinvertebrates, split sample means a single sample that is analyzed by both the State Laboratory and by the commercial, public, or industrial laboratory.
(13) "State laboratory" means the Water Sciences Section of the North Carolina Division of Water Resources.
(14) "Toxicant" means any specific chemical, compound, or mixture of chemicals or compounds regulated by an NPDES permit or defined as a toxic substance in 15A NCAC 02B .0202.

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;
Readopted Eff. July 1, 2019.

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

(a) Certification Fees:
(1) The first category, as set forth in Rule .1105 of this Section, shall be certified at a cost of five hundred dollars ($500.00) per year. Additional categories, shall be certified at a cost of four hundred dollars ($400.00) per year per category. The addition of parameters not included in the original certification shall be certified at a cost of one hundred dollars ($100.00) per year 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 shall pay the State a four hundred dollar ($400.00) per year renewal fee for each category of certification or the minimum fee of five hundred dollars ($500.00) per year if only one category is certified. Renewal certification fees are due by November 1 annually.
(2) 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1105 CERTIFICATION

(a) Commercial, public, and industrial laboratories shall obtain certification from the Division for biological parameters that are required to be reported pursuant to G.S. 143, Article 21, Part 1.

(b) For the purposes of certification and setting fees, parameters shall be grouped in the following categories:

(1) Acute Toxicity Testing/Invertebrate;
(2) Acute Toxicity Testing/Vertebrate;
(3) Chronic Toxicity Testing/Invertebrate;
(4) Chronic Toxicity Testing/Vertebrate;
(5) Algal and Aquatic Plant Toxicity Testing; and
(6) Aquatic Population Survey and Analysis.

(c) All certifications shall be in effect for one year and may be renewed for additional one-year periods as set forth in Rule .1104 of this Section.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(1)(10); 143-215.66;*
Eff. October 1, 1988;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1106 DECERTIFICATION

(a) The Director or the Director's designee may revoke the entire laboratory certification for:

(1) failing to maintain the facilities, records, personnel, equipment, or a quality assurance program as required by these Rules;
(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 proficiency testing samples. Acceptable results on proficiency testing samples are those that fall within the specified acceptable range as indicated by the State Laboratory or State Laboratory-approved vendor. 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 these Rules;
(2) obtain acceptable results as set out in Subparagraph (b)(1) of this Paragraph on two consecutive split samples that have also been analyzed by the Division;
(3) submit a split sample to the Division as requested;
(4) use approved procedures as defined in Rule .1103 of this Section;
(5) report equipment changes that would affect the laboratory's ability to perform a test category to the State Laboratory within 30 days of the change;
(6) report results of proficiency testing to the State Laboratory within the requirements that are set forth by the proficiency study;
(7) maintain records and perform quality controls as set forth by these Rules;
(8) maintain equipment required for any certified parameter;
(9) implement and maintain quality control programs approved in conjunction with certification; or
(10) maintain a qualified staff, as specified in Rule .1110(f)(1) and (2) of this Section.

(c) Requirements for Laboratories following Decertification:

(1) A laboratory shall not analyze samples for parameters in decertified categories for programs governed by rules of this Section.
(2) A decertified commercial laboratory shall notify any clients affected by the laboratory's decertification and supply the State Laboratory with a list of those clients affected and a written certification that those clients have been notified. If the decertified laboratory arranges for a certified laboratory to perform analyses during the period of decertification, the decertified laboratory shall supply the Division with the name of the replacement laboratory and the clients involved. The name of the certified laboratory that performs analyses shall appear on all data submitted to the Division.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(10); 143-215.66;*
Eff. October 1, 1988;
Amended Eff. March 1, 1993;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1107 RECERTIFICATION

(a) A laboratory decertified for any reason other than the submittal of falsified data reports or other information shall be recertified after 30 days upon demonstrating 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 prior to 12 months after the decertification and then only at such time as the laboratory has demonstrated to the Director, or their delegate, that the standards for initial certification have been met.
(c) If a laboratory that was decertified due to either failure of proficiency testing samples or split samples seeks recertification, the laboratory shall submit a written request to the State Laboratory requesting evaluations for the category pursuant to Rule .1106(b) of this Section for which the laboratory was decertified. Two consecutive samples shall have acceptable results as set forth in Rule .1106 of this Section to achieve recertification. The first of these samples for recertification shall be submitted or arranged by the Division no later than 30 days after receipt of the written request. The second shall 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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1108 RECIPROCITY
(a) Laboratories certified by other states or federal programs shall be given reciprocal certification if the 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 pursuant to this Rule shall pay all applicable fees set forth in Rule .1104 of this Section.

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;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1109 ADMINISTRATION
(a) Appeals. If the Director or the Director's delegate denies certification, or decertifies a laboratory, the laboratory may appeal pursuant to G.S. 150B, Article 3.
(b) The State Laboratory shall maintain a current list of certified commercial, industrial, or public laboratories.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215(a)(4); 143-215.3(a)(10); 143-215.66;*
Eff. October 1, 1988;
Amended Eff. March 1, 1993;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1110 IMPLEMENTATION
(a) Each laboratory requesting State certification, certification renewal, or recertification shall apply to the Division. Each application shall be reviewed to determine if personnel, equipment, records, quality control procedures, and methodology meet the requirements pursuant to 40 CFR 136.3 and these Rules. After receiving a completed application and prior to issuing certification, a representative of the Division shall inspect each laboratory to verify the information in the application and if the laboratory meets requirements pursuant to these Rules.
(b) Analytical methods, sample preservation, sample containers, and sample holding times shall conform to the methodologies specified in:
(1) 40 CFR Part 136, hereby incorporated by reference and including subsequent amendments and editions. Copies of the Code of Federal Regulations, 40 CFR Part 136, may be obtained from the Superintendent of Documents, U.S. Government Printing Office (GPO), Superintendent of Public Documents, Washington, D.C. 20402 and free of charge on the Internet at http://www.ecfr.gov; and
(2) Rule .1111 of this Section.
(c) Pursuant to G.S. 143B-282, the Environmental Management Commission or designated delegate, shall approve the State Laboratory to develop Approved Procedures for Biological Procedures based upon the methods contained in 40 CFR Part 136 and Rule .1111 of this Section. Approved Procedures for Biological Procedures document shall

be available for inspection at the State Laboratory, 4401 Reedy Creek Road, Raleigh, North Carolina, 27607 or may be obtained free of charge on the State Laboratory Certification website at https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-sciences-home-page/aquatic-toxicology-branch.

(d) Pursuant to G.S. 143B-282, the Environmental Management Commission or designated delegate, may approve other analytical procedures, parameters, or parameter methods that have been demonstrated to produce verifiable and repeatable results.

(e) In order to maintain certification, each laboratory shall meet the requirements of this Section for proficiency testing samples submitted to the Division. Proficiency testing by certified laboratories shall be required no more than three times annually for each category certified.

(f) In order to receive and maintain certification, the following criteria shall be met:

(1) The supervisor of an aquatic toxicology or biological survey laboratory shall have a Bachelor's degree from an accredited college as defined in 34 CFR 602 or university in a biological science or related science curriculum and three years of cumulative laboratory experience in aquatic toxicity testing or aquatic population surveying, or a Master's degree in a biological or related science and one year of cumulative laboratory experience in aquatic toxicity testing or aquatic population surveying.

(2) All laboratory supervisors shall be subject to review by the Division. One person shall not serve as supervisor of more than two laboratories. The supervisor shall provide direct supervision and evaluation of all technical personnel and shall be responsible for the performance and reporting of all analyses. Upon absence, the supervisor shall arrange for a suitable substitute who meets the requirements of Subparagraph (f)(1) of this Rule and is capable of insuring the performance as set forth by these Rules of all laboratory procedures. Existing laboratory supervisors who do not meet the minimum requirements shall be accepted after review by the Division if they meet all other certification requirements and previous performance has met the requirements of these Rules.

(3) All applications and fees shall be due pursuant to Rule .1104 of this Section. Upon the Division establishing compliance with the requirements of this Section, certification shall be issued by the Director or Director's delegate within 45 days of receipt of the fees for certification.

(4) Each laboratory shall develop and maintain a document outlining quality control procedures for testing of all approved procedures in their certification and dissolved oxygen, temperature, conductivity, and pH. All aquatic toxicology laboratories shall also develop and maintain a document outlining quality control procedures for testing of total hardness and total residual chlorine. These documents shall 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 for five years as evidence that these practices have met the requirements of these Rules and are being carried out and shall be available to the State Laboratory upon request.

(7) The quality control program shall be approved in conjunction with certification by the Director or the Director's delegate.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(10); 143-215.66;*
Eff. October 1, 1988;
Amended Eff. October 1, 1993;
Readopted Eff. July 1, 2019.

15A NCAC 02H .1111 BIOLOGICAL LABORATORY CERTIFICATION AND QUALITY ASSURANCE

(a) Aquatic Toxicology Laboratories shall have the following laboratory resources:

(1) 200 square feet of laboratory space;

(2) 20 linear feet of laboratory bench space;

(3) one drained sink with hot and cold running water;

(4) control of culture environment including lighting, cooling, and heating to maintain organism as set forth in the approved procedures and these Rules;

(5) one refrigerator that will maintain sample temperatures between 0.0 degrees Celsius and 6.0 degrees Celsius;

(6) current copies of the approved procedures for which the laboratory is requesting certification;

(7) glassware, chemicals, supplies, and equipment to perform any procedures included in the requested certification;

(8) instrumentation capable of measuring dissolved oxygen, pH, temperature, conductivity, and salinity (for saltwater tests) directly from test vessels of any procedure included in certification application. Equivalent surrogate vessels may be utilized for physical measurements if injury to test organisms may result;

(9) instrumentation or analytical capabilities to perform measurements of total residual chlorine to a level at least as low as 0.1 mg/l and total hardness to a level at least as low as 1 mg/l;

(10) a dissecting microscope and a compound microscope for those laboratories requesting or maintaining either of the categories of Acute Toxicity Testing/Invertebrate or Chronic Toxicity Testing/Invertebrate. The compound microscope shall have a minimum magnification of 400x and a maximum magnification of greater than or equal to 1,000x;

(11) a balance capable of weighting 0.0001g and Class "S" or equivalent reference weights. A balance capable of weighing fish larvae to 0.00001g for those laboratories requesting or maintaining certification for the category Chronic Toxicity Testing/Vertebrate;

(12) Cladocerans shall be cultured in-house. All other organisms may be purchased from a supplier;

(13) dilution water for use in whole effluent toxicity testing with chemical characteristics such that the pH is between 6.5 S.U. and 8.5 S.U. and total hardness as calcium carbonate is between 30 ppm and 50 ppm for surface water and 80 ppm and 100 ppm for synthetic lab water. If receiving waters have characteristics outside of these stated pH and hardness ranges, then alternate pH and hardness ranges shall be accepted upon demonstration to the State Laboratory that the alternate ranges are better suited to testing objectives, and that quality assurance standards have been met; and

(14) chain-of-custody documentation.

(b) Aquatic Population Survey and Analysis Laboratories shall have the following laboratory resources:

(1) 150 square feet of laboratory space;

(2) eight linear feet of laboratory bench space;

(3) binocular dissecting microscopes and compound microscopes suitable for survey type;

(4) vials, preservatives, and space to maintain representative sample collections for at least one year after collection;

(5) current taxonomic guides and reference materials to support identification;

(6) chain-of-custody documentation forms, laboratory records, and seals;

(7) sampling equipment to support collection of appropriate biological organisms; and

(8) settling tubes and one inverted microscope with a minimum magnification of 300x for those laboratories requesting or maintaining certification for algae.

(c) All laboratories shall adhere to the following quality assurance requirements:

(1) instruments used in or associated with toxicity testing, including automatic sampling equipment, pH meter, dissolved oxygen meter, and conductivity meter, shall be calibrated each day before the instrument is used. Calibrations performed shall be recorded;

(2) a minimum of five valid reference toxicant tests shall be performed and entered on a control chart for each toxicity test organism and toxicity test type for which a lab is certified. A maximum of 20 data points shall be entered on a control chart;

(3) a reference toxicant test shall be performed:

(A) every two weeks for each organism used in acute whole effluent toxicity testing; or such that North Carolina National Pollutant Discharge Elimination System (NPDES) acute tests are performed within one week of an acute reference toxicant test for the organism in question. To maintain acute certification for an organism, acute reference toxicant tests shall be performed at least quarterly; and

(B) once per month for each organism used in chronic whole effluent toxicity testing; or such that North Carolina NPDES chronic tests are performed within two weeks of a chronic reference toxicant test for the organism in question. To maintain chronic certification for an organism, chronic reference toxicant tests shall be performed at least quarterly.

(4) a reference test shall be performed with each batch of organisms received from an outside supplier;

(5) the endpoint for chronic reference toxicant tests shall be the IC25 as determined by the linear interpolation method described in EPA-821-R-02-013 and EPA-821-R-02-014, herein

incorporated by reference, including any subsequent amendments or editions. These methods are available free of charge at: https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods;

(6) acceptable alternative culture media utilized to culture the algae Selenastrum capricornutum for use as Ceriodaphnia food are as follows:

(A) the Marine Biology Laboratory (MBL) medium as described in the Handbook of Phycological Methods Handbook of Phycological Methods: Culture Methods and Growth Measurements. 1973. J. Stein, ed. University Press, Cambridge, MA, available at a cost of sixty eight dollars and eighty five cents ($68.85), herein incorporated by reference, including subsequent amendments and editions; and

(B) additional nutrients for the preparation of algae medium described in Section 13.6.15 of EPA-821-R-02-013 and Appendix A1, Section 3.10.3 of EPA-821-R-02-012. These methods are available free of charge at: https://www.epa.gov/cwa-methods/whole-effluent-toxicity-methods, herein incorporated by reference, including any subsequent amendments and editions. The volume of nutrient stock solutions found in Table 1 on Page 147 of EPA-821-R-02-013 or Page 133 of EPA-821-R-02-012 may be adjusted so that solutions 1.A, 1.D, and 2 are added at a rate of 2 ml/l, and solutions 1.B and 1.C are added at a rate of 6 ml/l;

(7) a representative of each test organism cultured, including those obtained from an outside supplier, shall be taxonomically identified to the species level at least annually. Specimens shall be preserved and held for one additional year;

(8) when closed incubators are used for toxicity testing or test organism culturing purposes, culturing and testing activities shall not be contained within the same incubator;

(9) effluent samples collected for chronic Ceriodaphnia dubia tests shall be used within 36 hours of collection and not more than 72 hours after first use of the sample for test renewal. The beginning of this period is defined as the time of the collection of a grab sample or the time of collection of the last subsample of a composite sample to the time that the organisms are introduced to the test solution; and

(10) a record shall be maintained for all samples entering the laboratory that documents the sample identity and includes the following information:

(A) the sample number;

(B) the sample temperature at receipt;

(C) the time and date of sample collection and receipt;

(D) the name of person from whom the sample was received; and

(E) the name of person who received the sample.

(d) The following procedure modifications have been approved by the EPA and shall be followed by certified laboratories:

(1) acute and chronic toxicity tests shall be conducted at 25.0 degrees Celsius plus or minus 1.0 degree Celsius, except that chronic tests for Mysidopsis bahia shall be conducted at 26.0 degrees Celsius plus or minus 1.0 degree Celsius. Certified laboratories may request in writing variances from the State Laboratory for species which require alternate temperatures in accordance with EPA procedures;

(2) organisms used in acute toxicity tests shall have food made available for a minimum of two hours prior to initiation of testing;

(3) for cladoceran species, the feeding amount prior to the acute test shall be at least 0.05 ml of YCT and 0.05 ml of a solution of the algae Selenastrum capricornutum with a cell concentration of 1.71 X 10^7 cells/ ml per 15 ml of culture solution;

(4) for each sample used in a toxicity test, the following parameters shall be measured and recorded from an undiluted aliquot:

(A) pH;

(B) specific conductance;

(C) total residual chlorine;

(D) dissolved oxygen; and

(E) salinity (for salt water test);

(5) for each sample used in a toxicity test, the following parameters shall be measured in the control and the highest toxicant concentration tested at the beginning of the test, prior to renewal, following each renewal, and at the termination of the test:

(A) temperature;
(B) dissolved oxygen;
(C) pH; and
(D) salinity (for salt water test);

(6) Ceriodaphnia dubia used in toxicity tests shall meet the following requirements:
(A) be obtained from individual cultures;
(B) be obtained from third or subsequent broods of adults not being more than 14 days in age and containing eight or more neonates with an average adult mortality not exceeding 20 percent per culture board;
(C) chronic Ceriodaphnia dubia analyses shall have an additional test acceptability criterion of complete third brood neonate production by at least 80 percent of the surviving control organisms;
(D) Ceriodaphnia dubia neonate reproduction totals from chronic tests shall include only organisms produced in the first through third broods;
(E) the percentage of male Ceriodaphnia dubia control organisms shall not exceed 20 percent in chronic Ceriodaphnia dubia tests; and
(F) the Ceriodaphnia dubia control organism reproduction coefficient of variation (CV) shall be less than 40 percent for a chronic Ceriodaphnia dubia test;

(7) "Observed-effect" in a chronic Ceriodaphnia dubia test shall be defined as:
(A) statistical significant decrease in survival of the treatment organism as compared to the control organisms; or
(B) 20 percent or greater decrease in treatment organisms as compared to the control organism reproduction that is also determined to be statistically different from the control organism reproduction;

(8) acute tests shall be terminated within one hour of their stated length;

(9) the North Carolina Pass/Fail chronic tests and Phase II Ceriodaphnia dubia chronic tests shall meet the following requirements:
(A) follow a schedule where the test is started on day zero, renewed on day two and five, and terminated no later than seven days and two hours after the initiation of the test;
(B) follow a schedule where each daily feeding shall consist of addition of 0.05 ml of yeast-Cerophyll® -trout chow (YCT) food and 0.05 ml of a solution of the algae Selenastrum capricornutum with a cell concentration of 1.71×10^{7} cells/ml per 15 ml of test solution; and
(C) the percent reduction for chronic Ceriodaphnia dubia analysis for each treatment shall be calculated by subtracting the mean number of neonates produced by the treatment organisms from the mean number of neonates produced by the control organisms, dividing that number by the mean number of neonates produced by the control organisms, and multiplying by 100 percent;

(10) the North Carolina Pass/Fail Ceriodaphnia dubia chronic test shall be performed as two treatments exposing 12 test organisms to each treatment. The first treatment shall be considered the control population and shall be exposed at 0 percent effluent and 100 percent dilution water;

(11) the North Carolina Pass/Fail acute test shall be performed as two treatments with the control population specified as Treatment 1, and the effluent treatment specified as Treatment 2. Each treatment shall be tested using four identical test vessels. Each treatment shall contain 10 test organisms, for a total of 80 test organisms; and

(12) there shall be no removal of chlorine or any other effluent constituent by either chemical or physical methods prior to testing.

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.66;*
Eff. October 1, 1988;
Readopted Eff. July 1, 2019.

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 pertaining to the issuance of surface water and ground water Special Orders by the Environmental Management Commission.

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1);*
Eff. October 1, 1990;
Readopted Eff. May 1, 2020.

15A NCAC 02H .1202 DEFINITIONS

The terms used in this Section 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)" 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 pollution to achieve some stipulated actions designed to reduce, eliminate, or prevent water quality degradation.

(2) "Director" means the Director of the Division of Water Resources.

(3) "Special Order" means a directive of the Commission to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State. The term includes all orders or instruments issued by the Commission pursuant to G.S. 143-215.2.

History Note: *Authority G.S. 143-212; 143-213; 143-215.2; 143-215.3(a)(1);*
Eff. October 1, 1990;
Readopted Eff. May 1, 2020.

15A NCAC 02H .1203 PUBLIC NOTICE

(a) The Director shall provide notice of a proposed Consent Order in accordance with G.S. 143-215.2(a1)(1). The notice shall include the following information:

(1) name, address, and phone number of the agency issuing the public notice;

(2) name and address of the person to whom the order is directed;

(3) a summary of the proposed conditions of the agreement, including a disclosure of the final compliance date and the permit conditions that the permittee will be allowed to exceed;

(4) notice that a public meeting may be requested in accordance with G.S. 143-215.2(a1)(2); and

(5) a description of the information available for public review, where it can be found, and procedures for obtaining copies of documents.

(b) If a public meeting request is received, the Director shall consider all requests for a public meeting in accordance with G.S. 143-215.2(a1)(2). If he or she determines that there is public interest in holding a public meeting, he or she shall provide notice as set forth in G.S. 143-215.2(a1)(2). The notice shall include the following:

(1) the information specified in Subparagraphs (a)(1), (2), (3) and (5) of this Rule;

(2) the time and location for the meeting; and

(3) how public comment is to be provided.

(c) Any person may request to receive copies of all notices required by this Rule, and the Director shall provide 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, correction of typographical errors, and interim date extensions, in a consent order without public notice provided that the modifications do not extend the 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);*
Eff. November 1, 1990;
Amended Eff. August 3, 1992;
Readopted Eff. May 1, 2020.

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

The Director shall take final action in accordance with G.S. 143-215.2(a1)(4) on Special Orders by Consent in those cases where a public meeting is not held as provided in G.S. 143-215.2(a1)(2).

History Note: *Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4);*
Eff. October 1, 1990;
Readopted Eff. May 1, 2020.

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);*
Eff. October 1, 1990;
Amended Eff. August 3, 1992;
Readopted Eff. May 1, 2020.

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

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

(1) A person that accepts responsibility for causing or contributing to pollution of the waters of the State may apply for a Special Order by Consent (Order, or SOC). Applications shall be submitted to the Division of Water Resources. An Order establishes a schedule of corrective actions necessary to achieve compliance and alternative limitations that will be effective until corrective actions are completed or until the completion date specified in the Order, whichever comes first.

(2) Applications by permittees shall be made in triplicate on forms supplied by the Division along with a nonrefundable four hundred dollars ($400.00) processing fee. The application form shall include the following information:

(A) applicant's name, title, and contact information;

(B) facility name and permit number (if applicable);

(C) date of pre-application meeting with the appropriate Regional Office of the Division and the name of the Division's representative at the meeting;

(D) a description of the existing treatment process, a summary of violations of permit conditions or limits, and an explanation of the circumstances contributing to the violations;

(E) if a flow increase is requested, actual and proposed plant flows and flow allocations and demonstration of the need for the flow increase per Paragraph (c) of this Rule; only facilities owned by a unit of government may request a flow increase, per G.S. 143-215.67(b);

(F) the results of an evaluation of the treatment units, operational procedures, and performance of the existing facility conducted by the permittee or other person. The person preparing these results shall sign the document. The evaluation shall include the following:

(i) a determination that noncompliance is not due to failure by the permittee to operate, manage, and maintain the wastewater disposal system and that the existing wastewater disposal system is being operated in such a way as to attain, under the existing conditions, the highest degree of treatment for which it was designed;

(ii) recommendations as to how the efficiencies of these facilities can be maximized;

(iii) a certification that the facilities cannot be operated in a manner that would achieve compliance with permit limits; and

(iv) a determination of the permit limits that the facility can be expected to meet if operated at its maximum efficiency during the term of the SOC. These may include interim limits for the various phases of construction.

(G) a predicted schedule for activities necessary to achieve permit compliance;

(H) a list of funding sources to be used to complete the proposed activities and bring the facility into compliance. The list shall indicate whether the funds have been secured or

can be secured in time to conform to the schedule in Part (I) of this Subparagraph. If the permittee has applied for but not secured funding, it shall provide copies of those applications. If the permittee cannot verify that it has secured the necessary funding, it may propose alternative steps to achieving compliance with its permit;

(I) other information relevant to the Director's evaluation of the application, including:

(i) unavoidable future violations of permit conditions or limits;

(ii) a description of any process modifications that have been made to date to ensure optimum performance of existing facilities;

(iii) a description of collection system rehabilitation work completed or scheduled (including dates);

(iv) a description of any coordination with industrial users or actions taken to address their contribution to the permit violations;

(v) any other actions taken to correct problems and achieve compliance prior to applying for the SOC.

(vi) the date and results of the last Industrial Waste Survey; and

(vii) whether or not the facility is acting as a regional facility receiving wastewater from other municipalities having independent pretreatment programs;

(3) Applications shall be signed as follows:

(A) in the case of a City or Town, by a ranking elected official or other duly authorized employee;

(B) in the case of a corporation, company, industry, or other private entity, by a principal executive officer of at least the level of vice-president, or his duly authorized representative;

(C) in the case of a School District, by the Superintendent of Schools or other duly authorized employee;

(D) in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner; and

(E) in the case of a sole proprietorship, by the proprietor.

(4) If an application is incomplete or if the Division staff determines that additional information is necessary to its review of the application, the Director shall notify the applicant of the additional items or information required to complete the application. If the applicant does not complete its application within 60 days of the notification, the Director may return the application to the applicant and terminate the Division's review. The applicant must submit a new application, revised to address the deficiencies already noted and with a new processing fee, to renew its request for an Order.

(b) Development of the Special Order: Special Orders by Consent shall satisfy the following requirements:

(1) The compliance schedule in the SOC shall establish compliance dates for milestones, such as the start of construction, completion of construction, and achievement of final compliance, to ensure that the applicant makes continued progress toward achieving compliance with its permit requirements. No compliance date in the schedule shall follow the preceding compliance date by more than one year.

(2) For permitted facilities, interim effluent limitations may be established within the SOC. Interim effluent limitations must be based on the optimum expected efficiency of the existing treatment system, as demonstrated by the applicant in Subparagraph (a)(4) of this Rule. Tiered interim effluent limitations may be established in the SOC to reflect the operational capabilities of the facility during different phases of construction.

(3) To ensure compliance with all schedules dates and interim effluent limitations, all orders must contain stipulated penalties for violations of specified requirements. A monetary settlement may also be included in the order to settle previous violations.

(4) The permittee shall be responsible for funding necessary improvements to its wastewater disposal system and for paying any monetary settlement and stipulated penalties included in the SOC.

(c) No public utility or unit of government shall accept or agree to accept wastewater flows that exceed the capacity of its wastewater disposal system, except as provided in G.S. 143-215.67 and as follows:

(1) The Director shall not allow additional flows as part of a consent Order unless the following demonstrations are made. The Director shall then determine the allowable additional flows based on Parts (A) – (E) of this Subparagraph and in accordance with G.S. 143-215.67:

(A) New or improved wastewater treatment facilities will be constructed that will treat the existing and additional waste, or the permittee can adopt alternative steps to offset the impacts of the additional waste.

(B) The flows are needed to provide service to identified new residential, commercial, and industrial sources.

(C) The waste characteristics of the additional flows do not exceed those associated with domestic waste or are pretreated to domestic strengths. Volumes of non-pretreated industrial waste will be allocated as the calculated volume of their domestic strength equivalent. Additionally, waste of greater than domestic strength may be accepted if the parameters are not those for which interim limitations have been developed and the additional waste will not adversely affect the treatment efficiency of the treatment system for any modified parameter or result in the violation of any other permit limitation.

(D) Local legal authorities, including, but not limited to, adoption and implementation of industrial waste control and pretreatment ordinances, will be used to control new and proposed industrial waste tributary to the system.

(E) The cumulative impacts of wastewater allowed under the order will not result in any significant degradation in the quality of the waters ultimately receiving the wastewater during flow conditions between and including the 7-day, 10-year minimum flow (7Q10) and the average flow. The division must consider any special or protected waters, such as High Quality Waters, Water Supply Waters, Trout Waters and Shellfish Waters in conducting this evaluation. Significant degradation shall be defined to include but not be limited to the following:

(i) a predictive decrease in dissolved oxygen of 0.5 mg/l or greater at the point of maximum dissolved oxygen sag. In cases where existing (prior to adding the requested wastewater) dissolved oxygen conditions are above 3.0 mg/l at or above 7Q10 conditions, the amount of wastewater added shall not be allowed to depress oxygen levels below 3.0 mg/l at the corresponding stream flow levels. No additional wastewater shall be allowed if measured or predicted dissolved oxygen levels at any stream flow at or above 7Q10 are less than 3.0 mg/l, unless approval is granted by the Environmental Management Commission. In making this decision, the Commission shall consider criteria such as naturally occurring background dissolved oxygen levels and projected duration of impacts and stream miles impacted. In cases when adequate models do not exist to allow the prediction of instream dissolved oxygen impacts, no additional wastewater shall be allowed into the system;

(ii) a predictive increase in the length of the segment in which the predicted dissolved oxygen is less than dissolved oxygen standards of 0.5 miles or greater;

(iii) an increase in coliform bacteria density predicted to exceed applicable water quality standards;

(iv) increases in the coliform density, decreases in dissolved oxygen, or changes in any other water quality parameters that are predicted to result in mortality of fish or other aquatic life, closing of swimming areas or impact on other water uses, regardless of compliance with conditions Subparts (d)(1)(E)(i)-(iii) of this Rule; or

(v) the proposed addition of toxic pollutants in quantities not associated with domestic wastewater characteristics, unless the acceptance of the additional wastewater does not cause the combined wastewaters to exhibit reasonable potential to cause an exceedance of water quality standards.

(2) Approvals of additional wastewater flows may be rescinded by the Director for any schedule or condition violation, or limit violations in two consecutive months, or any other violation he or she considers sufficiently severe to warrant such action. In determining violations to be sufficiently severe, the Director shall consider factors such as the parameters being violated, the magnitude of the violations, the projected duration of the violations, the waters being impacted or projected to be impacted and the reasons for the violations. Upon a determination by the Director that the approval of a flow allocation is to be rescinded, he or she shall provide notice to the permittee that shall include the factors that made the decision necessary.

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

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 Resources (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 October 22, 2001 and that 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 (e.g. fill, earth, construction debris, soil, etc.).

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers or its designee determines that a particular water is not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section. If the U.S. Army Corps of Engineers or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent, and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1305(b) of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

(1) 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.

(2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits.

(d) Discharges resulting from activities that 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 described in 15A NCAC 02B .0230;

(2) Discharges to isolated man-made ponds or isolated man-made ditches constructed for stormwater management purposes;

(3) Discharges to any man-made isolated pond;

(4) Discharges to any wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual);

(5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits;

(6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and

(7) 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 October 22, 2001;

(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 October 22, 2001;

(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 October 22, 2001; or

(D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project that has established a Vested Right under North Carolina law prior to October 22, 2001.

(f) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:

(1) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0101.

(2) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0101.

(3) "Cumulative impact" means 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.

(4) "Director" means the Director of the Division.

(5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.

(6) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.

(7) "Wetland" means the term as defined in 15A NCAC 02B .0202.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;*
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;
Readopted Eff. June 15, 2020.

15A NCAC 02H .1302 FILING APPLICATIONS

(a) Any person needing issuance of an individual permit or Certificate of Coverage under a general permit for discharges resulting from activities that affect isolated classified surface waters or isolated wetlands shall file with the Director, at 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617, or 512 N Salisbury Street, Raleigh, NC 27604, an original and one copy of an application for a Permit or submit one complete copy of an application electronically via the following website: https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page. The application shall be made on a form provided or approved by the Division, available electronically via the following website: https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application. The application shall include at a minimum the following:

(1) the date of application;

(2) the name, address, and phone number of the property applicant. If the applicant is not the property owner(s), name, address, and phone number of the property owners(s);

(3) if the applicant is a corporation, the name and address of the North Carolina process agency, and the name, address, and phone number of the individual who is the authorized agent of the corporation and responsible for the activity for which certification is sought. The corporation must be registered with the NC Secretary of State's Office to conduct business in NC;

(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 municipality, if applicable, 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. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule;

(8) a map(s) with scales and north arrows that is legible to the reviewer and of sufficient detail to delineate the boundaries of the lands owned or proposed 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 including wetlands within the boundaries of said lands; and

(9) a signature by the applicant or an agent authorized by the applicant. If an agent is signing for the applicant, an agent authorization letter must be provided. In signing the application, the applicant certifies that all information contained therein or in support thereof is true and correct to the best of their knowledge.

(b) The Division may request in writing, and the applicant shall furnish, any additional information necessary to clarify the information provided in the application under Paragraph (a) of this Rule, or to complete the evaluation in Rule .1305 of this Section.

(c) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a) and (b) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission of the information. The final decision regarding the completeness of the application shall be made by the Division based upon the information required in Paragraphs (a) and (b) of this Rule, and any explanation provided by the applicant regarding omitted information provided in this Paragraph.

(d) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the evaluation in Rule .1305 of this Section. The applicant shall allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable for those places, upon the presentation of credentials.

(e) Other applications for permitting or certification by a division of the Department shall suffice for application for this Permit as long as the application contains all of the information specified in this Rule and it is specifically requested to the Division by the applicant that authorization is sought under this Rule. This application must be submitted by the applicant to the Division for review under this Permit.

History Note: *Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);*
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;
Readopted Eff. June 1, 2019.

15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING

(a) The Division shall provide public notice for proposed general permits. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices. Notice shall be made at least 30 calendar days prior to issuance of the general permit by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a general permit.

(b) Notice of each pending application for an individual permit shall be sent be to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.

(c) The notice shall set forth:

(1) the name and address of the applicant;

(2) the action requested in the application;

(3) the nature and location of the discharge; and

(4) the proposed date of final action to be taken by the Division on the application.

The notice shall also state where additional information is available online and on file with the Division. Information on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State

holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-6.2.

(d) This public notice requirement for an individual permit as described in Paragraph (b) of this Rule may be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 07J .0206, the U.S. Army Corps of Engineers according to their established procedures, or by a joint notice by the Division for an individual permit in accordance with Rule .0503 of this Subchapter.

(e) Any person who desires a public hearing on a general permit or an individual permit application shall so request in writing to the to the Division at the address listed in Rule .1302 of this Section. The request must be received by the Division within 30 calendar days following the Public Notice.

(f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as the reasons why a hearing was requested, the nature of the project, and the proposed impacts to waters of the State, the Division shall notify the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state the time, place, and format of the hearing. The notice can be combined with the notice required under Paragraph (c) of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public hearing to receive public comments.

(g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division shall add the email address of any such person to an email listerv and follow procedures set forth in Rule .0503(g) of this Subchapter.

(h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the Department or the U.S. Army Corps of Engineers.

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;
Readopted Eff. June 1, 2019.

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

(a) The Director shall issue the permit or Certificate of Coverage, deny the application, provide notice of hearing pursuant to Rule .1303 of this Section, or request additional information within 60 calendar days after receipt of the application. When the Director requests additional information, the 60-day review period restarts upon receipt of all of the additional information requested by the Director. Failure to issue the permit or Certificate of Coverage, deny the application, provide notice of hearing, or request additional information within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless:

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

(b) The Director shall issue the permit or Certificate of Coverage, deny the application, or request additional information within 60 calendar days following the close of the record for the public hearing. Failure to take action within 60 calendar days shall result in the waiver of the permit requirement by the Director, unless Subparagraphs (a)(1), (3), or (4) of this Rule apply.

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

(d) 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 by the Director 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 by the Director 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.

(e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the Director denies the application, the Director shall specify the reasons for the denial.

(f) 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 pursuant to Paragraph (g) of this Rule. The permit shall become enforceable when issued.

(g) Permit or Certificate of Coverage renewals shall require a new complete application. The applicant may request in writing that the Division grant an extension before the permit expires. An extension may be granted by the Division based on the new complete application for a time period of one additional year, provided that the construction has commenced or is under contract to commence before the permit expires.

(h) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-23.

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;
Readopted Eff. June 1, 2019.

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

(a) DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED. The following activities shall be deemed to be permitted:

(1) Discharges resulting from activities that impact less than 1/2 acre of isolated classified surface waters for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.

(2) Discharges resulting from activities that impact less than 150 linear feet of isolated classified streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.

(3) Discharges resulting from activities that impact less than or equal to one acre of isolated wetlands for the entire project in the coastal region, less than or equal to one-half acre of isolated wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of isolated wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Subparagraph, the coastal, piedmont and mountain regions shall be as follows:

(A) "Coastal Region" includes Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;

(B) "Piedmont Region" includes Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Orange, Person, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin Counties;

(C) "Mountain Region" includes Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.

(D) When a landowner believes their property is not in the correct region for purposes of this Rule, they may have a soil scientist conduct a site-specific evaluation to determine the soil series. The soil scientist shall be an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists. The landowner shall submit the soil report to the Division of Water Resources for review. Soil series that occur in North Carolina have been categorized by the Natural Resources Conservation Service of the US Department of Agriculture as defined in Rule .1306 of this Section.

(4) Conditions which must be met for projects deemed to be permitted:

(A) Erosion and sediment control practices shall equal at a minimum 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;

(B) 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 has released the specific area within the project;

(C) Uncured or curing concrete shall not come into direct contact with waters of the state; and

(D) All work in or adjacent to isolated stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual shall be used to minimize excavation in flowing water.

(E) 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.

(b) EVALUATION. The Division shall issue an Individual Permit or a Certificate of Coverage under a General Permit upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

(1) has no practical alternative. 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;

(2) has avoided and minimized impacts to isolated classified surface waters and isolated wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;

(3) would not cause or contribute to a violation of water quality standards;

(4) would not result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards; and

(5) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule.

(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses in isolated classified surface waters or isolated wetlands shall be reviewed in accordance with all of the following guidelines:

(1) The Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project;

(2) Mitigation requirements for impacts to isolated wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph (b)(3) of this Rule. The mitigation ratio for impacts exceeding the threshold for the entire project shall be 1:1. Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;

(3) Total impacts to less than 300 linear feet of isolated perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per stream shall not require compensatory mitigation. The mitigation ratio for isolated stream impacts shall be 1:1;

(4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;

(5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act may be used to satisfy the requirements of this Paragraph;

(6) Acceptable methods of mitigation as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2) or (3) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation;

(7) Mitigation for impacts to isolated classified surface waters, isolated streams and isolated wetlands shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director; and

(8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

History Note: *Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120; S.L. 2015-286; S.L. 2017-10;*
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;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));
Readopted Eff. June 15, 2020.

15A NCAC 02H .1306 SOIL SERIES

For purposes of implementing the rules in this Section, the Natural Resources Conservation Service of the U.S. Department of Agriculture have categorized soil series that occur in North Carolina as follows:

(1) Soil series in the Mountain Region shall include the following: Alarka, Anakeesta, Arkaqua, Ashe, Balsam, Bandana, Biltmore, Braddock, Bradson, Brasstown, Breakneck, Brevard, Brownwood, Buladean, Burton, Cades, Calvin, Cashiers, Cataloochee, Cataska, Chandler, Cheoah, Chester, Chestnut, Chestoa, Chiltoskie, Cleveland, Cliffield, Clifford, Clifton, Clingman, Codorus, Colvard, Comus, Cowee, Craggey, Crossnore, Cruso, Cullasaja, Cullowhee, Dellwood, Dillard, Dillsboro, Ditney, Edneytown, Edneyville, Ela, Ellijay, Elsinboro, Evard, Fannin, Farner, Fontaflora, French, Greenlee, Guyot, Harmiller, Hatboro, Hayesville, Heintooga, Hemphill, Hiwassee, Horsetrough, Huntdale, Iotla, Jeffrey, Junaluska, Kanuga, Keener, Kinkora, Lauada, Leatherwood, Longhope, Lonon, Lostcove, Luftee, Mars Hill, Maymead, Micaville, Nantahala, Nikwasi, Northcove, Nowhere, Oconaluftee, Ostin, Oteen, Peaks, Pigeonroost, Pineola, Pinnacle, Plott, Porters, Pullback, Rabun, Reddies, Rosman, Saluda, Santeetlah, Saunook, Sauratown, Shinbone, Skyuka, Smokemont, Snowbird, Soco, Spivey, Statler, Stecoah, Suches, Swannanoa, Sylco, Sylva, Tanasee, Tate, Thunder, Thurmont, Toccoa, Toecane, Toxaway, Transylvania, Trimont, Tsali, Tuckasegee, Tusquitee, Unaka, Unicoi, Unison, Walnut, Watauga, Wayah, Wesser, Whiteoak, Whiteside, and Zillicoa.

(2) Soil series in the Piedmont Region shall include the following: Alamance, Altavista, Appling, Appomattox, Armenia, Ashlar, Augusta, Ayersville, Badin, Banister, Bannertown, Belews Lake, Bentley, Bethera, Bethlehem, Biscoe, Brickhaven, Buncombe, Callison, Carbonton, Cartecay, Casville, Cecil, Chewacla, Cid, Claycreek, Cliffside, Clover, Colfax, Congaree, Coronaca,

Creedmoor, Cullen, Dan River, Danripple, Davidson, Davie, Delila, Devotion, Dorian, Durham, Elbert, Enon, Enott, Exway, Fairview, Georgeville, Goldston, Granville, Green Level, Grover, Gwinnett, Halifax, Hallison, Haw River, Helena, Herndon, Hibriten, Hiwassee, Hornsboro, Hulett, Iredell, Jackland, Kinkora, Kirksey, Lackstown, Leaksville, Lignum, Lloyd, Louisa, Louisburg, Madison, Mandale, Masada, Mattaponi, Mayodan, McQueen, Meadowfield, Mecklenburg, Merry Oaks, Misenheimer, Mocksville, Monacan, Moncure, Montonia, Mooshaunee, Nanford, Nason, Nathalie, Oak Level, Oakboro, Orange, Ostin, Pacolet, Pactolus, Peakin, Peawick, Penhook, Pfafftown, Picture, Pilot Mountain, Pinkston, Pinoka, Pittsboro, Poindexter, Polkton, Poplar Forest, Rasalo, Rhodhiss, Rion, Riverview, Ronda, Rowan, Saw, Secrest, Sedgefield, Siloam, Skyuka, Spartanburg, Spray, Spriggs, Starr, Stoneville, Stott Knob, Tarrus, Tatum, Tillery, Toast, Toccoa, Tomlin, Totier, Turbeville, Tussahaw, Uwharrie, Vance, Wadesboro, Wake, Warne, Wate, Wateree, Wedowee, Wehadkee, Westfield, White Store, Wickham, Wilkes, Winnsboro, Woolwine, Worsham, Wynott, Yadkin, and Zion.

(3) Soil series in the Coastal Region shall include the following: Acredale, Ailey, Alaga, Alpin, Arapahoe, Argent, Augusta, Autryville, Aycock, Backbay, Ballahack, Barclay, Bayboro, Baymeade, Belhaven, Bertie, Bethera, Bibb, Bladen, Blaney, Blanton, Bohicket, Bojac, Bolling, Bonneau, Bragg, Brookman, Butters, Byars, Cainhoy, Candor, Cape Fear, Cape Lookout, Caroline, Carteret, Centenary, Chapanoke, Charleston, Chastain, Chenneby, Chesapeake, Chipley, Chowan, Conaby, Conetoe, Corolla, Cowarts, Coxville, Craven, Croatan, Currituck, Dare, Deloss, Delway, Dogue, Dorovan, Dothan, Dragston, Duckston, Dunbar, Duplin, Echaw, Emporia, Engelhard, Exum, Faceville, Foreston, Fork, Fortescue, Fripp, Fuquay, Gertie, Gilead, Goldsboro, Grantham, Grifton, Gritney, Gullrock, Hobonny, Hobucken, Hyde, Hydeland, Icaria, Invershiel, Johns, Johnston, Kalmia, Kenansville, Kinston, Kureb, Lakeland, Leaf, Lenoir, Leon, Liddell, Lillington, Longshoal, Lucy, Lumbee, Lynchburg, Lynn Haven, Mandarin, Mantachie, Marlboro, Marvyn, Masontown, Maxton, Mayodan, McColl, Meggett, Mooshaunee, Muckalee, Munden, Murville, Myatt, Nahunta, Nakina, Nankin, Nawney, Neeses, Newhan, Newholland, Nimmo, Nixonton, Noboco, Norfolk, Ocilla, Onslow, Orangeburg, Osier, Ousley, Pactolus, Pamlico, Pantego, Pasquotank, Paxville, Peakin, Pelion, Pender, Perquimans, Pettigrew, Plummer, Pocalla, Polawana, Ponzer, Portsmouth, Pungo, Rains, Rimini, Roanoke, Roper, Rumford, Rutlege, Scuppernong, Seabrook, Seagate, Shellbluff, Stallings, State, Stockade, Suffolk, Tarboro, Tetotum, Thursa, Toisnot, Tomahawk, Tomotley, Torhunta, Troup, Uchee, Valhalla, Varina, Vaucluse, Wagram, Wahee, Wakulla, Wando, Wasda, Weeksville, Wilbanks,Winton, Woodington, Wrightsboro, Wysocking, Yaupon, Yeopim, and Yonges.

History Note: *Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;*
Eff. June 15, 2020.