

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

**S**

**2**

**SENATE BILL 1566\*  
Corrected Copy 6/12/06**

Short Title: Stormwater Management 2006.

(Public)

---

Sponsors: Senator Clodfelter.

---

Referred to: Agriculture/Environment/Natural Resources.

---

May 18, 2006

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II  
3 STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT  
4 WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL  
5 REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7                   **SECTION 1.(a)** Disapproval of Certain Rules. – Pursuant to G.S. 150B-21.3  
8 and S.L. 2003-229, the following rules, as adopted by the Environmental Management  
9 Commission and approved by the Rules Review Commission on 17 November 2005,  
10 are disapproved:

11       15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

12       15A NCAC 2H.1015 (Urbanizing Area Definitions)

13       15A NCAC 2H.1016 (Urbanizing County Designations)

14       15A NCAC 2H.1017 (Application Schedule and Required Contents)

15       15A NCAC 2H.1018 (Post-Construction Model Practices)

16       15A NCAC 2H.1019 (Exceptions)

17       15A NCAC 2H.0126 (Stormwater Discharges)

18       15A NCAC 2H.0150 (Definitions)

19       15A NCAC 2H.0151 (Public Entity Designations)

20       15A NCAC 2H.0152 (Petitions)

21       15A NCAC 2H.0153 (Application Schedule and Required Contents)

22       15A NCAC 2H.0154 (Implementation Schedule)

23       15A NCAC 2H.0155 (Post-Construction Model Practices)

24       15A NCAC 2H.0156 (Exceptions)

25                   **SECTION 1.(b)** Certain Rules Not Disapproved. – Notwithstanding  
26 subsection (a) of this section, the following rules, as adopted by the Environmental  
27 Management Commission and approved by the Rules Review Commission on 17  
28 November 2005, are not disapproved. These rules become effective 1 July 2006 and  
29 shall be implemented in conjunction with the provisions of this act. References in these

1 rules to any rule that is disapproved pursuant to this section shall be deemed to refer to  
2 the relevant provisions of this act and shall not be construed to give effect to the  
3 disapproved rule. To the extent that any provision of these rules is inconsistent with the  
4 provisions of this act, the provisions of this act control.

5 15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

6 15A NCAC 2H.1017 (Application Schedule and Required Contents)

7 15A NCAC 2H.0126 (Stormwater Discharges)

8 15A NCAC 2H.0153 (Application Schedule and Required Contents)

9 **SECTION 1.(c)** Sunset of 2004 Phase II Stormwater Management  
10 Legislation. – Section 15 of S.L. 2004-163 reads as rewritten:

11 "**SECTION 15.** This act is effective when it becomes law and expires ~~1 October~~  
12 ~~2011.~~ 1 July 2006."

13 **SECTION 2.** Definitions. – The following definitions apply to this act and  
14 its implementation:

- 15 (1) The definitions set out in 40 Code of Federal Regulations § 122.2  
16 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003  
17 Edition).
- 18 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 19 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of  
20 Terms).
- 21 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except  
22 for the definition of "Built-upon area", which is defined below.
- 23 (5) "1-year, 24-hour storm" means 24-hour rainfall of an intensity  
24 expected to be equalled or exceeded, on average, once in 12 months  
25 and with a duration of 24 hours.
- 26 (6) "BMP" means Best Management Practice.
- 27 (7) "Built-upon area" means that portion of a development project that is  
28 covered by impervious or partially impervious surface including, but  
29 not limited to, buildings; pavement and gravel areas such as roads,  
30 parking lots, and paths; and recreation facilities such as tennis courts.  
31 "Built-upon area" does not include a wooden slatted deck, the water  
32 area of a swimming pool, or pervious or partially pervious paving  
33 material to the extent that the paving material absorbs water or allows  
34 water to infiltrate through the paving material.
- 35 (8) "Division" means the Division of Water Quality in the Department.
- 36 (9) "New Development" means any project that increases the amount of  
37 built-upon area and for which a building permit, phased development  
38 plan approval, or site-specific development plan has been obtained on  
39 or after the date on which the requirements of this act become  
40 applicable to area in which the project is located. The applicable date  
41 depends on which public entity implements the requirements in the  
42 project area. If the Department implements the requirements, the date  
43 is the effective date of this act. If a public entity implements the  
44 requirements through delegation, the date is the date on which the

1 delegation becomes effective. If a public entity implements these  
2 requirements pursuant to a permit issued by the Department, the date is  
3 the date on which the public entities implementing ordinance or  
4 regulation becomes effective.

5 (10) "Planning jurisdiction" means the territorial jurisdiction within which a  
6 municipality exercises the powers authorized by Article 19 of Chapter  
7 160A of the General Statutes, or a county may exercise the powers  
8 authorized by Article 18 of Chapter 153A of the General Statutes.

9 (11) "Public entity" means the United States; the State; a city, village,  
10 township, county, school district, public college or university, or  
11 single-purpose governmental agency; or any other governing body that  
12 is created by federal or State law.

13 (12) "Redevelopment" means any rebuilding activity other than a  
14 rebuilding activity that results in no net increase in built-upon area and  
15 provides equal or greater stormwater control than the previous  
16 development.

17 (13) "Regulated entity" means any public entity that must obtain a Phase II  
18 National Pollutant Discharge Elimination System (NPDES) permit for  
19 stormwater management for its municipal separate storm sewer system  
20 (MS4).

21 (14) "Sensitive receiving waters" means any of the following:

22 a. Waters that are classified as high quality, outstanding resource,  
23 shellfish, trout, or nutrient-sensitive waters in accordance with  
24 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for  
25 Assignment of Water Quality Standards – General Procedures).

26 b. Waters that are occupied by or designated as critical habitat for  
27 aquatic animal species that are listed as threatened or  
28 endangered by the United States Fish and Wildlife Service or  
29 the National Marine Fisheries Service under the provisions of  
30 the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87  
31 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.

32 c. Waters for which the designated use, as described by the  
33 classification system set out in subsections (c), (d), and (e) of  
34 15A NCAC 2B .0101 (Procedures for Assignment of Water  
35 Quality Standards – General Procedures), have been determined  
36 to be impaired in accordance with the requirements of  
37 subsection (d) of 33 U.S.C. § 1313.

38 (15) "Significant contributor of pollutants" means a municipal separate  
39 storm sewer system (MS4) or a discharge that contributes to the  
40 pollutant loading of a water body or that destabilizes the physical  
41 structure of a water body such that the contribution to pollutant loading  
42 or the destabilization may reasonably be expected to adversely affect  
43 the quality and uses of the water body. Uses of a water body shall be  
44 determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B

1 .0222 (Classifications and Water Quality Standards Applicable to  
2 Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B  
3 .0300, et seq. (Assignment of Stream Classifications).

- 4 (16) "Total maximum daily load (TMDL) implementation plan" means a  
5 written, quantitative plan and analysis for attaining and maintaining  
6 water quality standards in all seasons for a specific water body and  
7 pollutant.

8 **SECTION 3.(a)** New Development and Redevelopment in Unincorporated  
9 Areas of Counties. –

10 (a) New development or redevelopment located in the unincorporated area of a  
11 county shall comply with the standards set forth in Section 7 of this act beginning 1 July  
12 2007 if the new development or redevelopment is located in:

- 13 (1) An area that is designated as an urbanized area under the 1990 or 2000  
14 census by the Bureau of the Census.
- 15 (2) The unincorporated area of a county outside of a municipality  
16 designated as an urbanized area under the 1990 or 2000 census by the  
17 Bureau of the Census that:
- 18 a. Extends one mile beyond the corporate limits of a municipality  
19 with a population of less than 10,000 individuals.
- 20 b. Extends two miles beyond the corporate limits of a municipality  
21 with a population of 10,000 or more individuals but less than  
22 25,000 individuals.
- 23 c. Extends three miles beyond the corporate limits of a  
24 municipality with a population of 25,000 or more individuals.
- 25 (3) An area delineated pursuant to subsection (b) of this section.
- 26 (4) A county that contains an area that is designated as an urbanized area  
27 under the 1990 or 2000 census by the Bureau of the Census in which  
28 the unduplicated sum of: (i) the area that is designated as an urbanized  
29 area under the 1990 or 2000 census by the Bureau of the Census; (ii)  
30 the area described in sub-subdivision b. of this subdivision; (iii) the  
31 area delineated pursuant to subsection (b) of this section; (iv) the  
32 jurisdiction of a regulated entity designated pursuant to Section 4 of  
33 this act; (v) the area that is regulated by a Phase II National Pollutant  
34 Discharge Elimination System (NPDES) permit for stormwater  
35 management required pursuant to Section 5 of this act; and (vi) areas  
36 in the county that are subject to any of the stormwater management  
37 programs administered by the Division equal or exceed fifty percent  
38 (50%) of the total geographic area of the county, unless the county has  
39 an actual population growth rate of less than the State population  
40 growth rate for the previous 10 years. For purposes of this subdivision,  
41 the stormwater programs administered by the Division are:
- 42 a. Water Supply Watershed (WS-I) – 15A NCAC 2B.0212.
- 43 b. Water Supply Watershed (WS-II) – 15A NCAC 2B.0214.
- 44 c. Water Supply Watershed (WS-III) – 15A NCAC 2B.0215.

- 1 d. Water Supply Watershed (WS-IV) – 15A NCAC 2B.0216.  
2 e. High Quality Waters (HQW) – 15A NCAC 2H.1006.  
3 f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.  
4 g. The Coastal Stormwater Program – 15A NCAC 2H.1005.  
5 h. The Neuse River Nutrient Sensitive Waters (NSW) Stormwater  
6 Management Program – 15A NCAC 2B.0235.  
7 i. The Tar-Pamlico River Nutrient Sensitive (NSW) Stormwater  
8 Management Program – 15A NCAC 2B.0258.  
9 j. Other Environmental Management Commission Nutrient  
10 Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.
- 11 (5) A county that contains an area that is designated as an urbanized area  
12 under the 1990 or 2000 census by the Bureau of the Census that has an  
13 actual population growth rate that exceeds 1.3 times the State  
14 population growth rate for the previous 10 years or that has a projected  
15 population growth rate that exceeds 1.3 times the projected State  
16 population growth rate for the next 10 years.
- 17 (b) Delineation process. – The Commission shall delineate regulated coverage  
18 areas as provided in this subdivision.
- 19 (1) Schedule. – The Commission shall implement the delineation process  
20 in accordance with the schedule for review and revision of basinwide  
21 water quality management plans as provided in G.S. 143-215.8B(c).
- 22 (2) Potential candidate coverage areas. – A potential candidate coverage  
23 area is the unincorporated area of a county that is outside a  
24 municipality designated as a regulated entity pursuant to subdivisions  
25 (2) and (3) of Section 4 of this act that:
- 26 a. Extends one mile beyond the corporate limits of a municipality  
27 with a population of less than 10,000 individuals.  
28 b. Extends two miles beyond the corporate limits of a municipality  
29 with a population of 10,000 or more individuals but less than  
30 25,000 individuals.  
31 c. Extends three miles beyond the corporate limits of a  
32 municipality with a population of 25,000 or more individuals.
- 33 (3) Identification of candidate coverage areas. – The Commission shall  
34 identify an area within a potential candidate coverage area described in  
35 sub-subdivision b. of this subdivision as a candidate coverage area if  
36 the discharge of stormwater within or from the unincorporated area has  
37 the potential to adversely impact water quality. An adverse impact on  
38 water quality includes any activity that violates water quality  
39 standards, including, but not limited to, any activity that impairs  
40 designated uses or that has a significant biological or habitat impact.
- 41 (4) Notice and comment on candidacy. – The Commission shall notify  
42 each public entity that is located in whole or in part in a candidate  
43 coverage area. After notification of each public entity, the Commission  
44 shall publish a map of the unincorporated areas within the river basin

1 that have been identified as candidates for delineation as regulated  
2 coverage areas. The Commission shall accept public comment on the  
3 proposed delineation of a candidate coverage area as a regulated  
4 coverage area for a period of not less than 30 days.

5 (5) Delineation of regulated coverage areas. – After review of public  
6 comment, the Commission shall delineate regulated coverage areas.  
7 The Commission shall delineate a candidate coverage area as a  
8 regulated coverage area only if the Commission determines that the  
9 discharge of stormwater within or from the candidate coverage area  
10 either:

11 a. Adversely impacts water quality.

12 b. Results in a significant contribution of pollutants to sensitive  
13 receiving waters, taking into account the effectiveness of other  
14 applicable water quality protection programs. To determine the  
15 effectiveness of other applicable water quality protection  
16 programs, the Commission shall consider the water quality of  
17 the receiving waters and whether the waters support the uses set  
18 out in subsections (c), (d), and (e) of 15A NCAC 2B .0101  
19 (Procedures for Assignment of Water Quality Standards –  
20 General Procedures) and the specific classification of the waters  
21 set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream  
22 Classifications).

23 (6) Notice of delineation. – The Commission shall provide written notice  
24 to each public entity that is located in whole or in part in a candidate  
25 coverage area of its delineation determination. The notice shall state  
26 the basis for the determination.

27 (c) Except as provided in this subdivision and Section 8 of this act, the  
28 Commission shall administer and enforce the standards for new development and  
29 redevelopment in the regulated coverage areas. To the extent that the new development  
30 or redevelopment is located in a municipal planning jurisdiction, the municipality shall  
31 administer and enforce the standards. A public entity may request that the Commission  
32 delegate administration and enforcement of the stormwater management program to the  
33 public entity as provided in Section 8 of this act.

34 **SECTION 3.(b)** New Development and Redevelopment in Non-Phase II  
35 Incorporated Areas in Certain Counties. – New development or redevelopment located  
36 in the incorporated areas of a county described in subdivisions (4) and (5) of subsection  
37 (a) of this section, that are not designated as an urbanized area under the 1990 or 2000  
38 census by the Bureau of the Census, shall comply with the standards set forth in Section  
39 7 of this act beginning 1 July 2007. The Commission shall administer and enforce the  
40 standards for new development and redevelopment unless the public entity requests that  
41 the Commission delegate administration and enforcement of the stormwater  
42 management program to the public entity as provided in Section 8 of this act.

43 **SECTION 4.** Designation of Regulated Entities. – A public entity that owns  
44 or operates a municipal separate storm sewer system (MS4) may be designated as a

1 regulated entity through federal designation, through a State designation process, or  
2 under a total maximum daily load (TMDL) implementation plan as provided in this  
3 section.

4 (1) Federal designation. – A public entity that owns or operates a  
5 municipal separate storm sewer system (MS4) may be designated as a  
6 regulated entity pursuant to 40 Code of Federal Regulations § 122.32  
7 (1 July 2003 Edition).

8 (2) State designation process. – The Commission shall designate a public  
9 entity that owns or operates a municipal separate storm sewer system  
10 (MS4) as a regulated entity as provided in this subdivision.

11 a. Designation schedule. – The Commission shall implement the  
12 designation process in accordance with the schedule for review  
13 and revision of basinwide water quality management plans as  
14 provided in G.S. 143-215.8B(c).

15 b. Identification of candidate regulated entities. – The  
16 Commission shall identify a public entity as a candidate for  
17 designation as a regulated entity if the municipal separate storm  
18 sewer system (MS4) either:

19 1. Discharges stormwater that has the potential to adversely  
20 impact water quality. An adverse impact on water quality  
21 includes any activity that causes or contributes to a  
22 violation of water quality standards, including, but not  
23 limited to, any activity that impairs designated uses or  
24 that has a significant biological or habitat impact.

25 2. Serves a public entity that has not been designated  
26 pursuant to subdivision (1) of this section and that has  
27 either a population of more than 10,000 or more than  
28 4,000 housing units and either a population density of  
29 1,000 people per square mile or more or more than 400  
30 housing units per square mile.

31 c. Notice and comment on candidacy. – The Commission shall  
32 notify each public entity identified as a candidate for  
33 designation as a regulated entity. After notification of each  
34 public entity, the Commission shall publish a list of all public  
35 entities within a river basin that have been identified as  
36 candidates for designation. The Commission shall accept public  
37 comment on the proposed designation of a public entity as a  
38 regulated entity for a period of not less than 30 days.

39 d. Designation of regulated entities. – After review of the public  
40 comment, the Commission shall make a determination on  
41 designation for each of the candidate public entities. The  
42 Commission shall designate a candidate public entity that owns  
43 or operates a municipal separate storm sewer system (MS4) as a

- 1 regulated public entity only if the Commission determines  
2 either that:
- 3 1. The public entity has an actual population growth rate  
4 that exceeds 1.3 times the State population growth rate  
5 for the previous 10 years.
  - 6 2. The public entity has a projected population growth rate  
7 that exceeds 1.3 times the projected State population  
8 growth rate for the next 10 years.
  - 9 3. The public entity has an actual population increase that  
10 exceeds fifteen percent (15%) of its previous population  
11 for the previous two years.
  - 12 4. The municipal separate storm sewer system (MS4)  
13 discharges stormwater that adversely impacts water  
14 quality.
  - 15 5. The municipal separate storm sewer system (MS4)  
16 discharges stormwater that results in a significant  
17 contribution of pollutants to receiving waters, taking into  
18 account the effectiveness of other applicable water  
19 quality protection programs. To determine the  
20 effectiveness of other applicable water quality protection  
21 programs, the Commission shall consider the water  
22 quality of the receiving waters and whether the waters  
23 support the uses set out in subsections (c), (d), and (e) of  
24 15A NCAC 2B .0101 (Procedures for Assignment of  
25 Water Quality Standards – General Procedures) and the  
26 specific classification of the waters set out in 15A NCAC  
27 2B .0300, et seq. (Assignment of Stream Classifications).
- 28 e. Notice of designation. – The Commission shall provide written  
29 notice to each public entity of its designation determination. For  
30 a public entity designated as a regulated entity, the notice shall  
31 state the basis for the designation and the date on which an  
32 application for a Phase II National Pollutant Discharge  
33 Elimination System (NPDES) permit for stormwater  
34 management must be submitted to the Commission.
- 35 f. Application schedule. – A public entity that has been designated  
36 as a regulated entity pursuant to this subdivision must submit its  
37 application for a Phase II National Pollutant Discharge  
38 Elimination System (NPDES) permit for stormwater  
39 management within 18 months of the date of notification.
- 40 (3) Designation under a total maximum daily load (TMDL)  
41 implementation plan. – The Commission shall designate an owner or  
42 operator of a small municipal separate storm sewer system (MS4) as a  
43 regulated entity if the municipal separate storm sewer system (MS4) is  
44 specifically listed by name as a source of pollutants for urban



1 stormwater in a total maximum daily load (TMDL) implementation  
2 plan developed in accordance with subsections (d) and (e) of 33 U.S.C.  
3 § 1313. The Commission shall provide written notice to each public  
4 entity of its designation determination. For a public entity designated  
5 as a regulated entity, the notice shall state the basis for the designation  
6 and the date on which an application for a Phase II National Pollutant  
7 Discharge Elimination System (NPDES) permit for stormwater  
8 management must be submitted to the Commission. A public entity  
9 that has been designated as a regulated entity pursuant to this  
10 subdivision must submit its application for a Phase II National  
11 Pollutant Discharge Elimination System (NPDES) permit for  
12 stormwater management within 18 months of the date of notification.

13 **SECTION 5.** Petition Process. – A petition may be submitted to the  
14 Commission to request that an owner or operator of a municipal separate storm sewer  
15 system (MS4) or a person who discharges stormwater be required to obtain a Phase II  
16 National Pollutant Discharge Elimination System (NPDES) permit for stormwater  
17 management as follows:

18 (1) Connected discharge petition. – An owner or operator of a permitted  
19 municipal separate storm sewer system (MS4) may submit a petition to  
20 the Commission to request that a person who discharges into the  
21 permitted municipal separate storm sewer system (MS4) be required to  
22 obtain a separate Phase II National Pollutant Discharge Elimination  
23 System (NPDES) permit for stormwater management. The  
24 Commission shall grant the petition and require the person to obtain a  
25 separate Phase II National Pollutant Discharge Elimination System  
26 (NPDES) permit for stormwater management if the petitioner shows  
27 that the person's discharge flows or will flow into the permitted  
28 municipal separate storm sewer system (MS4).

29 (2) Adverse impact petition. – Any person may submit a petition to the  
30 Commission to request that an owner or operator of a municipal  
31 separate storm sewer system (MS4) or a person who discharges  
32 stormwater be required to obtain a Phase II National Pollutant  
33 Discharge Elimination System (NPDES) permit for stormwater  
34 management.

35 a. Petition review. – The Commission shall grant the petition and  
36 require the owner or operator of the municipal separate storm  
37 sewer system (MS4) or the person who discharges stormwater  
38 to obtain a Phase II National Pollutant Discharge Elimination  
39 System (NPDES) permit for stormwater management if the  
40 petitioner shows any of the following:

- 41 1. The municipal separate storm sewer system (MS4) or the  
42 discharge discharges or has the potential to discharge  
43 stormwater to sensitive receiving waters in an area with:
  - 44 (i) an actual population growth rate that exceeds 1.3

- 1 times the State population growth rate for the previous
- 2 10 years; (ii) a projected population growth rate that
- 3 exceeds 1.3 times the projected State population growth
- 4 rate for the next 10 years; or (iii) an actual population
- 5 increase that exceeds fifteen percent (15%) of its
- 6 previous population for the previous two years.
- 7 2. The municipal separate storm sewer system (MS4) or the
- 8 discharge provides a significant contribution of
- 9 pollutants to sensitive receiving waters.
- 10 3. The municipal separate storm sewer system (MS4) or the
- 11 discharge is specifically listed by name as a source of
- 12 pollutants for urban stormwater in a total maximum daily
- 13 load (TMDL) implementation plan developed in
- 14 accordance with subsections (d) and (e) of 33 U.S.C. §
- 15 1313.
- 16 b. Types of evidence for required showing. – Petitioners may
- 17 make the required showing by providing to the Commission the
- 18 following information:
- 19 1. Monitoring data that includes, at a minimum,
- 20 representative sampling of the municipal separate storm
- 21 sewer system (MS4) or discharge and information
- 22 describing how the sampling is representative. The
- 23 petitioner must notify the owner or operator of the
- 24 municipal separate storm sewer system (MS4) or the
- 25 person who discharges stormwater of its intent to
- 26 conduct monitoring activities prior to conducting those
- 27 activities.
- 28 2. Scientific or technical literature that supports the
- 29 sampling methods.
- 30 3. Study and technical information on land uses in the
- 31 drainage area and the characteristics of stormwater
- 32 runoff from these land uses.
- 33 4. A map that delineates the drainage area of the petitioned
- 34 entity; the location of sampling stations; the location of
- 35 the stormwater outfalls in the adjacent area of the
- 36 sampling locations; general features, including, but not
- 37 limited to, surface waters, major roads, and political
- 38 boundaries; and areas of concern regarding water
- 39 quality.
- 40 5. For stormwater discharges to impaired waters,
- 41 documentation that the receiving waters are impaired or
- 42 degraded and monitoring data that demonstrates that the
- 43 municipal separate storm sewer system (MS4) or

- 1 discharge contributes pollutants for which the waters are  
2 impaired or degraded.
- 3 6. For stormwater discharges to nonimpaired waters,  
4 monitoring data that demonstrates that the owner or  
5 operator of the municipal separate storm sewer system  
6 (MS4) or the person who discharges stormwater is a  
7 significant contributor of pollutants to the receiving  
8 waters.
- 9 c. Water quality protection program offset. – If the petitioner  
10 makes the required showing, the Commission shall review the  
11 effectiveness of any existing water quality protection programs  
12 that may offset the need to obtain a Phase II National Pollutant  
13 Discharge Elimination System (NPDES) permit for stormwater  
14 management. To determine the effectiveness of other applicable  
15 water quality protection programs, the Commission shall  
16 consider the water quality of the receiving waters and whether  
17 the waters support the uses set out in subsections (c), (d), and  
18 (e) of 15A NCAC 2B .0101 (Procedures for Assignment of  
19 Water Quality Standards – General Procedures) and the specific  
20 classification of the waters set out in 15A NCAC 2B .0300, et  
21 seq. (Assignment of Stream Classifications). The Commission  
22 may deny the petition if it finds that existing water quality  
23 protection programs are adequate to address stormwater impacts  
24 on sensitive receiving waters and to insure compliance with a  
25 TMDL implementation plan.
- 26 (3) Petition administration. – The Commission shall process petitions in  
27 the following manner:
- 28 a. The Commission shall only accept petitions submitted on  
29 Department forms.
- 30 b. A separate petition must be filed for each municipal separate  
31 storm sewer system (MS4) or discharge.
- 32 c. The Commission shall evaluate only complete petitions. The  
33 Commission shall make a determination on the completeness of  
34 a petition within 90 days of receipt of the petition, or it shall be  
35 deemed complete. If the Commission requests additional  
36 information, the petitioner may submit additional information;  
37 and the Commission will determine, within 90 days of receipt  
38 of the additional information, whether the information  
39 completes the petition.
- 40 d. The petitioner shall provide a copy of the petition and a copy of  
41 any subsequent additional information submitted to the  
42 Commission to the chief administrative officer of the municipal  
43 separate storm sewer system (MS4) or the person in control of  
44 the discharge within 48 hours of each submittal.

- 1 e. The Commission shall post all petitions on the Division Web  
2 site and maintain copies available for inspection at the  
3 Division's office. The Commission shall accept and consider  
4 public comment for at least 30 days from the date of posting.
- 5 f. The Commission may hold a public hearing on a petition and  
6 shall hold a public hearing on a petition if it receives a written  
7 request for a public hearing within the public comment period,  
8 and the Commission determines that there is a significant public  
9 interest in holding a public hearing. The Commission's  
10 determination to hold a public hearing shall be made no less  
11 than 15 days after the close of the public comment period. The  
12 Commission shall schedule the hearing to be held within 45  
13 days of the close of the initial public comment period and shall  
14 accept and consider additional public comment through the date  
15 of the hearing.
- 16 g. An additional petition for the same municipal separate storm  
17 sewer system (MS4) or discharge received during the public  
18 comment period shall be considered as comment on the original  
19 petition. An additional petition for the same municipal separate  
20 storm sewer system (MS4) or discharge received after the  
21 public comment period ends and before the final determination  
22 is made shall be considered incomplete and held pending a final  
23 determination on the original petition.
- 24 1. If the Commission determines that the owner or operator  
25 of the municipal separate storm sewer system (MS4) or  
26 the person who discharges stormwater is required to  
27 obtain a Phase II National Pollutant Discharge  
28 Elimination System (NPDES) permit for stormwater  
29 management, any petitions for that municipal separate  
30 storm sewer system (MS4) or discharge that were held  
31 shall be considered in the development of the Phase II  
32 National Pollutant Discharge Elimination System  
33 (NPDES) permit for stormwater management.
  - 34 2. If the Commission determines that the owner or operator  
35 of the municipal separate storm sewer system (MS4) or  
36 the person who discharges stormwater is not required to  
37 obtain a Phase II National Pollutant Discharge  
38 Elimination System (NPDES) permit for stormwater  
39 management, an additional petition for the municipal  
40 separate storm sewer system (MS4) or discharge must  
41 present new information or demonstrate that conditions  
42 have changed in order to be considered. If new  
43 information is not provided, the petition shall be returned  
44 as substantially incomplete.

1           h.     The Commission shall evaluate a petition within 180 days of  
2           the date on which it is determined to be complete. If the  
3           Commission determines that the owner or operator of the  
4           municipal separate storm sewer system (MS4) or the person  
5           who discharges stormwater is required to obtain a Phase II  
6           National Pollutant Discharge Elimination System (NPDES)  
7           permit for stormwater management, the Commission shall  
8           notify the owner or operator of the municipal separate storm  
9           sewer system (MS4) or the person who discharges stormwater  
10          within 30 days of the requirement to obtain the permit. The  
11          owner or operator of the municipal separate storm sewer system  
12          (MS4) or the person who discharges stormwater must submit its  
13          application for a Phase II National Pollutant Discharge  
14          Elimination System (NPDES) permit for stormwater  
15          management within 18 months of the date of notification.

16           **SECTION 6.** Permit Standards. – To obtain a Phase II National Pollutant  
17          Discharge Elimination System (NPDES) permit for stormwater management, an  
18          applicant shall develop, implement, and enforce a stormwater management plan  
19          approved by the Commission that satisfies the six minimum control measures required  
20          by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation  
21          of the post-construction stormwater management measures required by 40 Code of  
22          Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as  
23          provided in Section 7 of this act.

24           **SECTION 7.** Post-Construction Model Practices. –

25          (a)     Permittees, delegated programs, and regulated entities must require  
26          stormwater controls appropriate to a project's level of density as follows:

27           (1)     Post-Construction Model Practices for Low Density Projects. – A low  
28           density project contains no more than twelve percent (12%) built-upon  
29           area if the project is within one-half mile of and draining to Class SA  
30           waters or no more than twenty-four percent (24%) built-upon area if  
31           the project is located elsewhere. Low density projects must use  
32           vegetated conveyances to the maximum extent practicable to transport  
33           stormwater runoff from the development. On-site stormwater  
34           treatment devices such as infiltration areas, bioretention areas, and  
35           level spreaders may also be used as added controls for stormwater  
36           runoff.

37           (2)     Post-Construction Model Practices for High Density Projects. – A high  
38           density project exceeds the low density thresholds of twelve percent  
39           (12%) built-upon area if the project is within one-half mile of and  
40           draining to Class SA waters or twenty-four percent (24%) built-upon  
41           area if the project is located elsewhere. High density projects must use  
42           structural stormwater management systems that will control and treat  
43           runoff from the first one inch of rain unless the project is in a county  
44           that is subject to the Coastal Area Management Act of 1974, in which

1 case the project must use structural stormwater management systems  
2 that will control and treat runoff from the first one and one-half inches  
3 of rain. The structural stormwater management system must also meet  
4 the following design standards:

- 5 a. Draw down the treatment volume no faster than 48 hours, but  
6 no slower than 120 hours.
- 7 b. Discharge the storage volume at a rate equal to or less than the  
8 pre-development discharge rate for the one-year, 24-hour storm.
- 9 c. Remove an eighty-five percent (85%) average annual amount of  
10 Total Suspended Solids.
- 11 d. Meet the General Engineering Design Criteria set out in 15A  
12 NCAC 02H .1008(c).

13 (b) Permittees, delegated programs, and regulated entities must require  
14 built-upon areas to be located at least 30 feet landward of all perennial and intermittent  
15 surface waters. For purposes of this section, a surface water shall be present if the  
16 feature is shown on either the most recent version of the soil survey map prepared by  
17 the Natural Resources Conservation Service of the United States Department of  
18 Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle  
19 topographic maps prepared by the United States Geologic Survey (USGS). Relief from  
20 this requirement may be allowed when surface waters are not present in accordance  
21 with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this  
22 requirement may be pursued in accordance with subsection (a) of Section 9 of this act.

23 (c) Permittees, delegated programs, and regulated entities must implement or  
24 require a fecal coliform reduction program that controls, to the maximum extent  
25 practicable, the sources of fecal coliform. At a minimum, the program shall include the  
26 development and implementation of an oversight program to ensure proper operation  
27 and maintenance of on-site wastewater treatment systems for domestic wastewater. For  
28 municipalities, this program may be coordinated with local county health departments.

29 (d) Permittees, delegated programs, and regulated entities must impose or require  
30 recorded deed restrictions and protective covenants that ensure development activities  
31 will maintain the project consistent with approved plans.

32 (e) Permittees, delegated programs, and regulated entities must implement or  
33 require an operation and maintenance plan that ensures the adequate long-term  
34 operation of the structural BMPs required by the program. The operation and  
35 maintenance plan must require the owner of each structural BMP to submit a  
36 maintenance inspection report on each structural BMP annually to the local program.

37 (f) Permittees, delegated programs, and regulated entities may allow cluster  
38 development on a project-by-project basis only if the project meets all of the following  
39 criteria:

- 40 (1) Overall density of the project meets the low-density thresholds of no  
41 more than twelve percent (12%) built-upon area for projects within  
42 one-half mile of and draining to Class SA waters and no more than  
43 twenty-four percent (24%) built-upon area for all other projects.

- 1           (2) Built-upon areas, by design and location, minimize stormwater runoff  
2           impact to the receiving waters, minimize concentrated stormwater  
3           flow, maximize the use of sheet flow through vegetated areas, and  
4           maximize the length of flow through vegetated areas.
- 5           (3) Development areas that have density that is greater than the overall  
6           project area density are located in upland areas and, to the maximum  
7           extent practicable, away from surface waters and drainageways.
- 8           (4) Areas other than built-upon areas within the project must remain  
9           undeveloped. The undeveloped area may be conveyed to a property  
10          owners' association, a local government, or a conservation  
11          organization for preservation as a park or greenway. The undeveloped  
12          area may also be placed in a permanent conservation or farmland  
13          preservation easement. A maintenance agreement for the undeveloped  
14          area must be filed with the property deed.
- 15          (5) The project transports stormwater through vegetated conveyances to  
16          the maximum extent practicable.
- 17          (g) For areas draining to Class SA waters, permittees, delegated programs, and  
18          regulated entities must:
- 19               (1) Use BMPs that result in the highest degree of fecal coliform die off  
20               and control to the maximum extent practicable sources of fecal  
21               coliform while still incorporating the stormwater controls required by  
22               the project's density level.
- 23               (2) Implement a program to control the sources of fecal coliform to the  
24               maximum extent practicable, including a pet waste management  
25               component, which may be achieved by revising an existing litter  
26               ordinance, and an on-site domestic wastewater treatment systems  
27               component to ensure proper operation and maintenance of such  
28               systems, which may be coordinated with local county health  
29               departments.
- 30               (3) Prohibit new points of stormwater discharge to Class SA waters and  
31               prohibit both increases in the volume of stormwater flow through  
32               conveyances and increases in capacity of conveyances in existing  
33               stormwater conveyance systems that drain to Class SA waters. Any  
34               modification or redesign of a stormwater conveyance system within  
35               the contributing drainage basin must not increase the net amount or  
36               rate of stormwater discharge through existing outfalls to Class SA  
37               waters. Diffuse flow of stormwater at a non-erosive velocity to a  
38               vegetated buffer or other natural area capable of providing effective  
39               infiltration of the runoff from the one-year, 24-hour storm shall not be  
40               considered a direct point of stormwater discharge. Consideration shall  
41               be given to soil type, slope, vegetation, and existing hydrology when  
42               evaluating infiltration effectiveness.
- 43          (h) For areas draining to Trout Waters, permittees, delegated programs, and  
44          regulated entities must:

- 1           (1) Use BMPs that avoid a sustained increase in the receiving water  
2           temperature, while still incorporating the stormwater controls required  
3           for the project's density level.
- 4           (2) Allow on-site stormwater treatment devices such as infiltration areas,  
5           bioretention areas, and level spreaders as added controls.
- 6       (i) For areas draining to Nutrient Sensitive Waters, permittees, delegated  
7       programs, and regulated entities must:
- 8           (1) Use BMPs that reduce nutrient loading, while still incorporating the  
9           stormwater controls required for the project's density level. In areas  
10          where the Department has approved a Nutrient Sensitive Water Urban  
11          Stormwater Management Program, the provisions of that program  
12          fulfill the nutrient loading reduction requirement. Nutrient Sensitive  
13          Water Urban Stormwater Management Program requirements are  
14          found in 15A NCAC 02B .0200.
- 15          (2) Implement a nutrient application management program for both  
16          inorganic fertilizer and organic nutrients to reduce nutrients entering  
17          waters of the State.

18       **SECTION 8.** Delegation. – A public entity that does not administer a Phase  
19       II National Pollutant Discharge Elimination System (NPDES) permit for stormwater  
20       management throughout the entirety of its planning jurisdiction and whose planning  
21       jurisdiction includes a regulated coverage area under Section 3 of this act may submit a  
22       stormwater management program for its regulated coverage area or a portion of its  
23       regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c).  
24       An ordinance or regulation adopted by a public entity shall at least meet and may  
25       exceed the minimum requirements of this act and the six minimum control measures  
26       required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or  
27       more public entities are authorized to establish a joint program and to enter into any  
28       agreements that are necessary for the proper administration and enforcement of the  
29       program. The resolution, memorandum of agreement, or other document that establishes  
30       any joint program must be duly recorded in the minutes of the governing body of each  
31       public entity participating in the program, and a certified copy of each resolution must  
32       be filed with the Commission. The Commission shall review each proposed program  
33       submitted to it to determine whether the submission is complete. Within 90 days after  
34       the receipt of a complete submission, the Commission shall notify the public entity  
35       submitting the program that it has been approved, approved with modifications, or  
36       disapproved. The Commission shall only approve a program upon determining that its  
37       standards equal or exceed those of this act and the six minimum control measures  
38       required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the  
39       Commission determines that any public entity is failing to administer or enforce an  
40       approved stormwater management program, it shall notify the public entity in writing  
41       and shall specify the deficiencies of administration and enforcement. If the public entity  
42       has not taken corrective action within 30 days of receipt of notification from the  
43       Commission, the Commission shall assume administration and enforcement of the



1 program until such time as the public entity indicates its willingness and ability to  
2 resume administration and enforcement of the program.

3 **SECTION 9.(a)** Exceptions. – The Department or an appropriate local  
4 authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant  
5 exceptions from the 30-foot landward location of built-upon area requirement as well as  
6 the deed restrictions and protective covenants requirement as follows:

7 (1) An exception may be granted if the application meets all of the  
8 following criteria:

- 9 a. Unnecessary hardships would result from strict application of  
10 the act.  
11 b. The hardships result from conditions that are peculiar to the  
12 property, such as the location, size, or topography of the  
13 property.  
14 c. The hardships did not result from actions taken by the  
15 petitioner.  
16 d. The requested exception is consistent with the spirit, purpose,  
17 and intent of this act; will protect water quality; will secure  
18 public safety and welfare; and will preserve substantial justice.  
19 Merely proving that the exception would permit a greater profit  
20 from the property shall not be considered adequate justification  
21 for an exception.

22 (2) Notwithstanding subdivision (1) of this section, exceptions shall be  
23 granted in any of the following instances:

- 24 a. When there is a lack of practical alternatives for a road  
25 crossing, railroad crossing, bridge, airport facility, or utility  
26 crossing as long as it is located, designed, constructed, and  
27 maintained to minimize disturbance, provide maximum nutrient  
28 removal, protect against erosion and sedimentation, have the  
29 least adverse effects on aquatic life and habitat, and protect  
30 water quality to the maximum extent practicable through the  
31 use of BMPs.  
32 b. When there is a lack of practical alternatives for a stormwater  
33 management facility; a stormwater management pond; or a  
34 utility, including but not limited to, water, sewer or gas,  
35 construction and maintenance corridor; as long as it is located  
36 15 feet landward of all perennial and intermittent surface waters  
37 and as long as it is located, designed, constructed, and  
38 maintained to minimize disturbance, provide maximum nutrient  
39 removal, protect against erosion and sedimentation, have the  
40 least adverse effects on aquatic life and habitat, and protect  
41 water quality to the maximum extent practicable through the  
42 use of BMPs.  
43 c. A lack of practical alternatives may be shown by demonstrating  
44 that, considering the potential for a reduction in size,

1 configuration, or density of the proposed activity and all  
2 alternative designs, the basic project purpose cannot be  
3 practically accomplished in a manner which would avoid or  
4 result in less adverse impact to surface waters.

5 (3) Reasonable and appropriate conditions and safeguards may be  
6 imposed upon any exception granted.

7 (4) Local authorities must document the exception procedure and submit  
8 an annual report to the Department on all exception proceedings.

9 (5) Appeals of the Department's exception decisions must be filed with the  
10 Office of Administrative Hearings, under G.S. 150B-23. Appeals of a  
11 local authority's exception decisions must be made to the appropriate  
12 Board of Adjustment or other appropriate local governing body, under  
13 G.S. 160A-388 or G.S. 153A-345.

14 **SECTION 9.(b) Exemption.** – A municipality with a population of less than  
15 1,000, including a municipality designated by the 1990 or 2000 census, is not required  
16 to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit  
17 for stormwater management unless the municipality is shown to be contributing to an  
18 impairment of State waters, as determined under the requirements of 33 U.S.C. §  
19 1313(d).

20 **SECTION 10. Implementation Schedule.** – The requirements of this act shall  
21 be implemented as follows:

22 (1) Public education and outreach minimum measures shall be  
23 implemented no later than 12 months from date of permit issuance.

24 (2) A regulated entity must implement its post-construction program no  
25 later than 24 months from the date the permit is issued.

26 (3) The Department shall include permit conditions that establish  
27 schedules for implementation of each minimum measure of the  
28 regulated entity's stormwater management program based on the  
29 submitted application so that the regulated entity fully implements its  
30 permitted program within five years from permit issuance.

31 **SECTION 11. Federal and State Development or Redevelopment Projects.** –  
32 A federal or State agency may apply to the Commission for a Phase I or Phase II  
33 National Pollutant Discharge Elimination System (NPDES) permit for stormwater  
34 management that applies to all of the activities of the agency or that applies to a  
35 particular development or redevelopment project. The Commission shall have  
36 exclusive jurisdiction to establish stormwater management requirements with respect to  
37 a particular project that is not under the jurisdiction of a federal or State agency that  
38 holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES)  
39 permit for stormwater management that applies to all of the activities of the agency or  
40 that applies to the particular development or redevelopment project. If a federal or State  
41 agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination  
42 System (NPDES) permit for stormwater management that applies to the particular  
43 development or redevelopment project, then the project is subject to the stormwater  
44 management requirements of this act as implemented by the Commission or by a local

1 government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the  
2 implementation of this act.

3 **SECTION 12.** General Permit. – The Commission shall develop and issue a  
4 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for  
5 stormwater management. The general permit requirements for post-construction  
6 stormwater management measures required by 40 Code of Federal Regulations §  
7 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out  
8 in Section 7 of this act but shall not impose any requirement on the permittee that  
9 exceeds the standards set out in Section 7 of this act. After the Commission has issued a  
10 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for  
11 stormwater management, a public entity that has applied for a permit may submit a  
12 notice of intent to be covered under the general permit to the Commission. The  
13 Commission shall treat an application for a permit as an application for an individual  
14 permit unless the applicant submits a notice of intent to be covered under a general  
15 permit under this section.

16 **SECTION 13.** Additional Rule-Making. – The Environmental Management  
17 Commission may adopt rules to replace the rules that are disapproved as provided in  
18 subsection (a) of Section 1 of this act. If the Commission adopts rules pursuant to this  
19 section, the rules shall be substantively identical to the provisions of Sections 2 through  
20 11 of this act. The Commission may amend the rules referenced in subsection (b) of  
21 Section 1 of this act to provide a complete and consistent regulatory scheme. If the  
22 Commission amends rules pursuant to this section, the amended rules shall be  
23 substantively identical to the rules referenced in subsection (b) of Section 1 of this act.  
24 The Commission may reorganize or renumber any of the rules to which this section  
25 applies at its discretion. Rules adopted pursuant to this section are not subject to  
26 G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall  
27 become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written  
28 objections had been received as provided by G.S. 150B-21.3(b2).

29 **SECTION 14.(a)** County Stormwater Control Ordinances. – Article 23 of  
30 Chapter 153A is amended by adding a new section to read:

31 "**§ 153A-453. Stormwater control.**

32 A county may adopt and enforce a stormwater control ordinance as authorized by  
33 Part 1 of Article 21 of Chapter 143 of the General Statutes or by any other provision of  
34 law. A stormwater control ordinance adopted pursuant to this section must at least meet  
35 all of the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General  
36 Statutes or other provision of law."

37 **SECTION 14.(b)** City Stormwater Control Ordinances. – Part 8 of Article  
38 19 of Chapter 160A is amended by adding a new section to read:

39 "**§ 160A-459. Stormwater control.**

40 A city may adopt and enforce a stormwater control ordinance as authorized by Part 1  
41 of Article 21 of Chapter 143 of the General Statutes or by any other provision of law. A  
42 stormwater control ordinance adopted pursuant to this section must at least meet all of  
43 the minimum requirements of Part 1 of Article 21 of Chapter 143 of the General  
44 Statutes or other provision of law."

1           **SECTION 15.** Construction of Act. –

2           (1) Nothing in this act shall be construed to limit, expand, or otherwise  
3           alter the authority of the Environmental Management Commission or  
4           any unit of local government to adopt stormwater management  
5           requirements that exceed the requirements of this act.

6           (2) The exclusions from the requirement to obtain a Phase II National  
7           Pollutant Discharge Elimination System (NPDES) permit set out in 40  
8           Code of Federal Regulations § 122.3 (1 July 2003 Edition), including  
9           the exclusions for certain nonpoint source agricultural and silvicultural  
10          activities, apply to the provisions of this act.

11          (3) This act shall not be construed to affect any delegation of any power or  
12          duty by the Commission to the Department or subunit of the  
13          Department.

14          (4) This act shall not be construed to affect any vested right to  
15          development under any provision of statutory or common law.

16           **SECTION 16.** Certain Provisions of Act not Codified; Set Out as Note. –

17   Except for Sections 17.(a) and 17.(b) of this act, notwithstanding G.S. 164-10, the  
18   Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of  
19   Statutes shall set out the text of this act as a note to G.S. 143-214.7 and may make notes  
20   concerning this act to other sections of the General Statutes as the Revisor of Statutes  
21   deems appropriate.

22           **SECTION 17.** Effective Date. – This act becomes effective 1 July 2006.

23   Sections 2 through 11 of this act expire when permanent rules to replace those sections  
24   have become effective as provided by Section 13 of this act.