

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 1566*
Corrected Copy 6/12/06
Agriculture/Environment/Natural Resources Committee Substitute Adopted
7/12/06
Fourth Edition Engrossed 7/13/06
House Committee Substitute Favorable 7/19/06**

Short Title: Stormwater Management 2006.

(Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

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

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)

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

3 "**SECTION 15.** This act is effective when it becomes law and expires ~~1 October~~
4 ~~2011~~, 1 July 2006."

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

- 7 (1) The definitions set out in 40 Code of Federal Regulations § 122.2
8 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003
9 Edition).
- 10 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 11 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of
12 Terms).
- 13 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except
14 for the definitions of "Built-upon area", "Development", and
15 "Redevelopment", which are defined below.
- 16 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to
17 be equaled or exceeded, on average, once in 12 months and with a
18 duration of 24 hours.
- 19 (6) "BMP" means Best Management Practice.
- 20 (7) "Built-upon area" means that portion of a project that is covered by
21 impervious or partially impervious surface including, but not limited to,
22 buildings; pavement and gravel areas such as roads, parking lots,
23 and paths; and recreation facilities such as tennis courts. "Built-upon
24 area" does not include a wooden slatted deck, the water area of a
25 swimming pool, or pervious or partially pervious paving material to
26 the extent that the paving material absorbs water or allows water to
27 infiltrate through the paving material.
- 28 (8) "Development" means any land-disturbing activity that increases the
29 amount of built-upon area or that otherwise decreases the infiltration
30 of precipitation into the soil.
- 31 (9) "Division" means the Division of Water Quality in the Department.
- 32 (10) "Planning jurisdiction" means the territorial jurisdiction within which a
33 municipality exercises the powers authorized by Article 19 of Chapter
34 160A of the General Statutes, or a county may exercise the powers
35 authorized by Article 18 of Chapter 153A of the General Statutes.
- 36 (11) "Public entity" means the United States; the State; a city, village,
37 township, county, school district, public college or university, or
38 single-purpose governmental agency; or any other governing body that
39 is created by federal or State law.
- 40 (12) "Redevelopment" means any land-disturbing activity that does not
41 result in a net increase in built-upon area and that provides greater or
42 equal stormwater control than the previous development.
- 43 (13) "Regulated entity" means any public entity that must obtain a Phase II
44 National Pollutant Discharge Elimination System (NPDES) permit for

1 stormwater management for its municipal separate storm sewer system
2 (MS4).

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

- 4 a. Waters that are classified as high quality, outstanding resource,
5 shellfish, trout, or nutrient-sensitive waters in accordance with
6 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for
7 Assignment of Water Quality Standards – General Procedures).
8 b. Waters that are occupied by or designated as critical habitat for
9 aquatic animal species that are listed as threatened or
10 endangered by the United States Fish and Wildlife Service or
11 the National Marine Fisheries Service under the provisions of
12 the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87
13 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
14 c. Waters for which the designated use, as described by the
15 classification system set out in subsections (c), (d), and (e) of
16 15A NCAC 2B .0101 (Procedures for Assignment of Water
17 Quality Standards – General Procedures), have been determined
18 to be impaired in accordance with the requirements of
19 subsection (d) of 33 U.S.C. § 1313.

20 (15) "Shellfish resource waters" means Class SA waters that contain an
21 average concentration of 500 parts per million of natural chloride ion.
22 Average concentration is determined by averaging the chloride
23 concentrations of five water samples taken one-half mile downstream
24 from the project site that are taken on separate days, within one hour of
25 high tide, and not within 48 hours following a rain event. The chloride
26 ion concentrations are to be determined by a State-certified laboratory.

27 (16) "Significant contributor of pollutants" means a municipal separate
28 storm sewer system (MS4) or a discharge that contributes to the
29 pollutant loading of a water body or that destabilizes the physical
30 structure of a water body such that the contribution to pollutant loading
31 or the destabilization may reasonably be expected to adversely affect
32 the quality and uses of the water body. Uses of a water body shall be
33 determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B
34 .0222 (Classifications and Water Quality Standards Applicable to
35 Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B
36 .0300, et seq. (Assignment of Stream Classifications).

37 (17) "Total maximum daily load (TMDL) implementation plan" means a
38 written, quantitative plan and analysis for attaining and maintaining
39 water quality standards in all seasons for a specific water body and
40 pollutant.

41 **SECTION 3.** Program Implementation. – The Commission shall implement
42 the federal Phase II stormwater management requirements set out in 40 Code of Federal
43 Regulations §§ 122.21, 122.26, and 122.28 through 122.37 (1 July 2003 Edition).

44 **SECTION 4.(a)** Development in Unincorporated Areas of Counties. –

1 (a) Development that cumulatively disturbs one acre or more of land located in
2 the unincorporated area of a county shall comply with the standards set forth in Section
3 9 of this act beginning 1 July 2007 if the development is located in:

4 (1) An area that is designated as an urbanized area under the most recent
5 federal decennial census.

6 (2) The unincorporated area of a county outside of a municipality
7 designated as an urbanized area under the most recent federal
8 decennial census that extends:

9 a. One mile beyond the corporate limits of a municipality with a
10 population of less than 10,000 individuals.

11 b. Two miles beyond the corporate limits of a municipality with a
12 population of 10,000 or more individuals but less than 25,000
13 individuals.

14 c. Three miles beyond the corporate limits of a municipality with
15 a population of 25,000 or more individuals.

16 (3) An area delineated pursuant to subsection (b) of this section.

17 (4) A county that contains an area that is designated as an urbanized area
18 under the most recent federal decennial census in which the
19 unduplicated sum of: (i) the area that is designated as an urbanized
20 area under the most recent federal decennial census; (ii) the area
21 described in subdivision (2) of subsection (a) of this section; (iii) the
22 area delineated pursuant to subsection (b) of this section; (iv) the
23 jurisdiction of a regulated entity designated pursuant to Section 5 of
24 this act; (v) the area that is regulated by a Phase II National Pollutant
25 Discharge Elimination System (NPDES) permit for stormwater
26 management required pursuant to Section 6 of this act; and (vi) areas
27 in the county that are subject to any of the stormwater management
28 programs administered by the Division equal or exceed seventy-five
29 percent (75%) of the total geographic area of the county. For purposes
30 of this subdivision, the stormwater programs administered by the
31 Division are:

32 a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.

33 b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.

34 c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.

35 d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.

36 e. High Quality Waters (HQW) – 15A NCAC 2H.1006.

37 f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.

38 g. The Coastal Stormwater Program – 15A NCAC 2H.1005.

39 h. The Neuse River Basin Nutrient Sensitive Waters (NSW)
40 Management Strategy – 15A NCAC 2B.0235.

41 i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW)
42 Management Strategy – 15A NCAC 2B.0258.

43 j. The Randleman Lake Water Supply Watershed Nutrient
44 Management Strategy – 15A NCAC 2B.0251.

- 1 k. Other Environmental Management Commission Nutrient
2 Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.
- 3 (5) A county that contains an area that is designated as an urbanized area
4 under the 1990 or 2000 federal decennial census and that has an actual
5 population growth rate that exceeded the State population growth rate
6 for the period 1995 through 2004.
- 7 (b) Delineation Process. – The Commission shall delineate regulated coverage
8 areas as provided in this subsection.
- 9 (1) Schedule. – The Commission shall implement the delineation process
10 in accordance with the schedule for review and revision of basinwide
11 water quality management plans as provided in G.S. 143-215.8B(c).
- 12 (2) Potential candidate coverage areas. – A potential candidate coverage
13 area is the unincorporated area of a county that is outside a
14 municipality designated as a regulated entity pursuant to subdivisions
15 (2) and (3) of Section 5 of this act that:
- 16 a. Extends one mile beyond the corporate limits of a municipality
17 with a population of less than 10,000 individuals.
- 18 b. Extends two miles beyond the corporate limits of a municipality
19 with a population of 10,000 or more individuals but less than
20 25,000 individuals.
- 21 c. Extends three miles beyond the corporate limits of a
22 municipality with a population of 25,000 or more individuals.
- 23 (3) Identification of candidate coverage areas. – The Commission shall
24 identify an area within a potential candidate coverage area described in
25 sub-subdivision b. of subdivision (2) of this subsection as a candidate
26 coverage area if the discharge of stormwater within or from the
27 unincorporated area has the potential to adversely impact water
28 quality. An adverse impact on water quality includes any activity that
29 violates water quality standards, including, but not limited to, any
30 activity that impairs designated uses or that has a significant biological
31 or habitat impact.
- 32 (4) Notice and comment on candidacy. – The Commission shall notify
33 each public entity that is located in whole or in part in a candidate
34 coverage area. After notification of each public entity, the Commission
35 shall publish a map of the unincorporated areas within the river basin
36 that have been identified as candidates for delineation as regulated
37 coverage areas. The Commission shall accept public comment on the
38 proposed delineation of a candidate coverage area as a regulated
39 coverage area for a period of not less than 30 days.
- 40 (5) Delineation of regulated coverage areas. – After review of public
41 comment, the Commission shall delineate regulated coverage areas.
42 The Commission shall delineate a candidate coverage area as a
43 regulated coverage area only if the Commission determines that the

1 discharge of stormwater within or from the candidate coverage area
2 either:

- 3 a. Adversely impacts water quality.
4 b. Results in a significant contribution of pollutants to sensitive
5 receiving waters, taking into account the effectiveness of other
6 applicable water quality protection programs. To determine the
7 effectiveness of other applicable water quality protection
8 programs, the Commission shall consider the water quality of
9 the receiving waters and whether the waters support the uses set
10 out in subsections (c), (d), and (e) of 15A NCAC 2B .0101
11 (Procedures for Assignment of Water Quality Standards –
12 General Procedures) and the specific classification of the waters
13 set out in 15A NCAC 2B .0300, et seq. (Assignment of Stream
14 Classifications).

- 15 (6) Notice of delineation. – The Commission shall provide written notice
16 to each public entity that is located in whole or in part in a candidate
17 coverage area of its delineation determination. The notice shall state
18 the basis for the determination.

19 (c) Except as provided in this subsection and Section 10 of this act, the
20 Commission shall administer and enforce the standards for development in the regulated
21 coverage areas. To the extent authorized by law, where the development is located in a
22 municipal planning jurisdiction, the municipality shall administer and enforce the
23 standards. A public entity may request that the Commission delegate administration and
24 enforcement of the stormwater management program to the public entity as provided in
25 Section 10 of this act.

26 **SECTION 4.(b)** Development in Non-Phase II Incorporated Areas in
27 Certain Counties. – Development that cumulatively disturbs one acre or more of land
28 located in the incorporated areas of a county described in subdivisions (4) and (5) of
29 subsection (a) of this section, that are not designated as an urbanized area under the
30 most recent federal decennial census, shall comply with the standards set forth in
31 Section 9 of this act beginning 1 July 2007. The Commission shall administer and
32 enforce the standards for development unless the public entity requests that the
33 Commission delegate administration and enforcement of the stormwater management
34 program to the public entity as provided in Section 10 of this act.

35 **SECTION 5.** Designation of Regulated Entities. – A public entity that owns
36 or operates a municipal separate storm sewer system (MS4) may be designated as a
37 regulated entity through federal designation, through a State designation process, or
38 under a total maximum daily load (TMDL) implementation plan as provided in this
39 section.

- 40 (1) Federal designation. – A public entity that owns or operates a
41 municipal separate storm sewer system (MS4) may be designated as a
42 regulated entity pursuant to 40 Code of Federal Regulations § 122.32
43 (1 July 2003 Edition).

- 1 (2) State designation process. – The Commission shall designate a public
2 entity that owns or operates a municipal separate storm sewer system
3 (MS4) as a regulated entity as provided in this subdivision.
- 4 a. Designation schedule. – The Commission shall implement the
5 designation process in accordance with the schedule for review
6 and revision of basinwide water quality management plans as
7 provided in G.S. 143-215.8B(c).
- 8 b. Identification of candidate regulated entities. – The
9 Commission shall identify a public entity as a candidate for
10 designation as a regulated entity if the municipal separate storm
11 sewer system (MS4) either:
- 12 1. Discharges stormwater that has the potential to adversely
13 impact water quality. An adverse impact on water quality
14 includes any activity that causes or contributes to a
15 violation of water quality standards, including, but not
16 limited to, any activity that impairs designated uses or
17 that has a significant biological or habitat impact.
- 18 2. Serves a public entity that has not been designated
19 pursuant to subdivision (1) of this section and that has
20 either a population of more than 10,000 or more than
21 4,000 housing units and either a population density of
22 1,000 people per square mile or more or more than 400
23 housing units per square mile.
- 24 c. Notice and comment on candidacy. – The Commission shall
25 notify each public entity identified as a candidate for
26 designation as a regulated entity. After notification of each
27 public entity, the Commission shall publish a list of all public
28 entities within a river basin that have been identified as
29 candidates for designation. The Commission shall accept public
30 comment on the proposed designation of a public entity as a
31 regulated entity for a period of not less than 30 days.
- 32 d. Designation of regulated entities. – After review of the public
33 comment, the Commission shall make a determination on
34 designation for each of the candidate public entities. The
35 Commission shall designate a candidate public entity that owns
36 or operates a municipal separate storm sewer system (MS4) as a
37 regulated public entity only if the Commission determines
38 either that:
- 39 1. The public entity has an actual population growth rate
40 that exceeds 1.3 times the State population growth rate
41 for the previous 10 years.
- 42 2. The public entity has a projected population growth rate
43 that exceeds 1.3 times the projected State population
44 growth rate for the next 10 years.

- 1 3. The public entity has an actual population increase that
2 exceeds fifteen percent (15%) of its previous population
3 for the previous two years.
- 4 4. The municipal separate storm sewer system (MS4)
5 discharges stormwater that adversely impacts water
6 quality.
- 7 5. The municipal separate storm sewer system (MS4)
8 discharges stormwater that results in a significant
9 contribution of pollutants to receiving waters, taking into
10 account the effectiveness of other applicable water
11 quality protection programs. To determine the
12 effectiveness of other applicable water quality protection
13 programs, the Commission shall consider the water
14 quality of the receiving waters and whether the waters
15 support the uses set out in subsections (c), (d), and (e) of
16 15A NCAC 2B .0101 (Procedures for Assignment of
17 Water Quality Standards – General Procedures) and the
18 specific classification of the waters set out in 15A NCAC
19 2B .0300, et seq. (Assignment of Stream Classifications).
- 20 e. Notice of designation. – The Commission shall provide written
21 notice to each public entity of its designation determination. For
22 a public entity designated as a regulated entity, the notice shall
23 state the basis for the designation and the date on which an
24 application for a Phase II National Pollutant Discharge
25 Elimination System (NPDES) permit for stormwater
26 management must be submitted to the Commission.
- 27 f. Application schedule. – A public entity that has been designated
28 as a regulated entity pursuant to this subdivision must submit its
29 application for a Phase II National Pollutant Discharge
30 Elimination System (NPDES) permit for stormwater
31 management within 18 months of the date of notification.
- 32 (3) Designation under a total maximum daily load (TMDL)
33 implementation plan. – The Commission shall designate an owner or
34 operator of a small municipal separate storm sewer system (MS4) as a
35 regulated entity if the municipal separate storm sewer system (MS4) is
36 specifically listed by name as a source of pollutants for urban
37 stormwater in a total maximum daily load (TMDL) implementation
38 plan developed in accordance with subsections (d) and (e) of 33 U.S.C.
39 § 1313. The Commission shall provide written notice to each public
40 entity of its designation determination. For a public entity designated
41 as a regulated entity, the notice shall state the basis for the designation
42 and the date on which an application for a Phase II National Pollutant
43 Discharge Elimination System (NPDES) permit for stormwater
44 management must be submitted to the Commission. A public entity

1 that has been designated as a regulated entity pursuant to this
2 subdivision must submit its application for a Phase II National
3 Pollutant Discharge Elimination System (NPDES) permit for
4 stormwater management within 18 months of the date of notification.

5 **SECTION 6.** Petition Process. – A petition may be submitted to the
6 Commission to request that an owner or operator of a municipal separate storm sewer
7 system (MS4) or a person who discharges stormwater be required to obtain a Phase II
8 National Pollutant Discharge Elimination System (NPDES) permit for stormwater
9 management as follows:

10 (1) Connected discharge petition. – An owner or operator of a permitted
11 municipal separate storm sewer system (MS4) may submit a petition to
12 the Commission to request that a person who discharges into the
13 permitted municipal separate storm sewer system (MS4) be required to
14 obtain a separate Phase II National Pollutant Discharge Elimination
15 System (NPDES) permit for stormwater management. The
16 Commission shall grant the petition and require the person to obtain a
17 separate Phase II National Pollutant Discharge Elimination System
18 (NPDES) permit for stormwater management if the petitioner shows
19 that the person's discharge flows or will flow into the permitted
20 municipal separate storm sewer system (MS4).

21 (2) Adverse impact petition. – Any person may submit a petition to the
22 Commission to request that an owner or operator of a municipal
23 separate storm sewer system (MS4) or a person who discharges
24 stormwater be required to obtain a Phase II National Pollutant
25 Discharge Elimination System (NPDES) permit for stormwater
26 management.

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

- 33 1. The municipal separate storm sewer system (MS4) or the
34 discharge discharges or has the potential to discharge
35 stormwater that may cause or contribute to a water
36 quality standard violation.
- 37 2. The municipal separate storm sewer system (MS4) or the
38 discharge provides a significant contribution of
39 pollutants to receiving waters.
- 40 3. The municipal separate storm sewer system (MS4) or the
41 discharge is specifically listed by name as a source of
42 pollutants for urban stormwater in a total maximum daily
43 load (TMDL) implementation plan developed in

- 1 accordance with subsections (d) and (e) of 33 U.S.C. §
2 1313.
- 3 b. Types of evidence for required showing. – Petitioners may
4 make the required showing by providing to the Commission the
5 following information:
- 6 1. Monitoring data that includes, at a minimum,
7 representative sampling of the municipal separate storm
8 sewer system (MS4) or discharge and information
9 describing how the sampling is representative. The
10 petitioner must notify the owner or operator of the
11 municipal separate storm sewer system (MS4) or the
12 person who discharges stormwater of its intent to
13 conduct monitoring activities prior to conducting those
14 activities.
- 15 2. Scientific or technical literature that supports the
16 sampling methods.
- 17 3. Study and technical information on land uses in the
18 drainage area and the characteristics of stormwater
19 runoff from these land uses.
- 20 4. A map that delineates the drainage area of the petitioned
21 entity; the location of sampling stations; the location of
22 the stormwater outfalls in the adjacent area of the
23 sampling locations; general features, including, but not
24 limited to, surface waters, major roads, and political
25 boundaries; and areas of concern regarding water
26 quality.
- 27 5. For stormwater discharges to impaired waters,
28 documentation that the receiving waters are impaired or
29 degraded and monitoring data that demonstrates that the
30 municipal separate storm sewer system (MS4) or
31 discharge contributes pollutants for which the waters are
32 impaired or degraded.
- 33 6. For stormwater discharges to nonimpaired waters,
34 monitoring data that demonstrates that the owner or
35 operator of the municipal separate storm sewer system
36 (MS4) or the person who discharges stormwater is a
37 significant contributor of pollutants to the receiving
38 waters.
- 39 c. Water quality protection program offset. – If the petitioner
40 makes the required showing, the Commission shall review the
41 effectiveness of any existing water quality protection programs
42 that may offset the need to obtain a Phase II National Pollutant
43 Discharge Elimination System (NPDES) permit for stormwater
44 management. To determine the effectiveness of other applicable

1 water quality protection programs, the Commission shall
2 consider the water quality of the receiving waters and whether
3 the waters support the uses set out in subsections (c), (d), and
4 (e) of 15A NCAC 2B .0101 (Procedures for Assignment of
5 Water Quality Standards – General Procedures) and the specific
6 classification of the waters set out in 15A NCAC 2B .0300, et
7 seq. (Assignment of Stream Classifications). The Commission
8 may deny the petition if it finds that existing water quality
9 protection programs are adequate to address stormwater impacts
10 on sensitive receiving waters and to ensure compliance with a
11 TMDL implementation plan.

- 12 (3) Petition administration. – The Commission shall process petitions in
13 the following manner:
- 14 a. The Commission shall only accept petitions submitted on
15 Department forms.
 - 16 b. A separate petition must be filed for each municipal separate
17 storm sewer system (MS4) or discharge.
 - 18 c. The Commission shall evaluate only complete petitions. The
19 Commission shall make a determination on the completeness of
20 a petition within 90 days of receipt of the petition, or it shall be
21 deemed complete. If the Commission requests additional
22 information, the petitioner may submit additional information;
23 and the Commission will determine, within 90 days of receipt
24 of the additional information, whether the information
25 completes the petition.
 - 26 d. The petitioner shall provide a copy of the petition and a copy of
27 any subsequent additional information submitted to the
28 Commission to the chief administrative officer of the municipal
29 separate storm sewer system (MS4) or the person in control of
30 the discharge within 48 hours of each submittal.
 - 31 e. The Commission shall post all petitions on the Division Web
32 site and maintain copies available for inspection at the
33 Division's office. The Commission shall accept and consider
34 public comment for at least 30 days from the date of posting.
 - 35 f. The Commission may hold a public hearing on a petition and
36 shall hold a public hearing on a petition if it receives a written
37 request for a public hearing within the public comment period,
38 and the Commission determines that there is a significant public
39 interest in holding a public hearing. The Commission's
40 determination to hold a public hearing shall be made no less
41 than 15 days after the close of the public comment period. The
42 Commission shall schedule the hearing to be held within 45
43 days of the close of the initial public comment period and shall

- 1 accept and consider additional public comment through the date
2 of the hearing.
- 3 g. An additional petition for the same municipal separate storm
4 sewer system (MS4) or discharge received during the public
5 comment period shall be considered as comment on the original
6 petition. An additional petition for the same municipal separate
7 storm sewer system (MS4) or discharge received after the
8 public comment period ends and before the final determination
9 is made shall be considered incomplete and held pending a final
10 determination on the original petition.
- 11 1. If the Commission determines that the owner or operator
12 of the municipal separate storm sewer system (MS4) or
13 the person who discharges stormwater is required to
14 obtain a Phase II National Pollutant Discharge
15 Elimination System (NPDES) permit for stormwater
16 management, any petitions for that municipal separate
17 storm sewer system (MS4) or discharge that were held
18 shall be considered in the development of the Phase II
19 National Pollutant Discharge Elimination System
20 (NPDES) permit for stormwater management.
- 21 2. If the Commission determines that the owner or operator
22 of the municipal separate storm sewer system (MS4) or
23 the person who discharges stormwater is not required to
24 obtain a Phase II National Pollutant Discharge
25 Elimination System (NPDES) permit for stormwater
26 management, an additional petition for the municipal
27 separate storm sewer system (MS4) or discharge must
28 present new information or demonstrate that conditions
29 have changed in order to be considered. If new
30 information is not provided, the petition shall be returned
31 as substantially incomplete.
- 32 h. The Commission shall evaluate a petition within 180 days of
33 the date on which it is determined to be complete. If the
34 Commission determines that the owner or operator of the
35 municipal separate storm sewer system (MS4) or the person
36 who discharges stormwater is required to obtain a Phase II
37 National Pollutant Discharge Elimination System (NPDES)
38 permit for stormwater management, the Commission shall
39 notify the owner or operator of the municipal separate storm
40 sewer system (MS4) or the person who discharges stormwater
41 within 30 days of the requirement to obtain the permit. The
42 owner or operator of the municipal separate storm sewer system
43 (MS4) or the person who discharges stormwater must submit its
44 application for a Phase II National Pollutant Discharge

1 Elimination System (NPDES) permit for stormwater
2 management within 18 months of the date of notification.

3 **SECTION 7.** Permit Standards. – To obtain a Phase II National Pollutant
4 Discharge Elimination System (NPDES) permit for stormwater management, an
5 applicant shall, to the extent authorized by law, develop, implement, and enforce a
6 stormwater management plan approved by the Commission that satisfies the six
7 minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1
8 July 2003 Edition). The evaluation of the post-construction stormwater management
9 measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003
10 Edition) shall be conducted as provided in Section 9 of this act. Regulated entities may
11 propose using any existing State or local program that relates to the minimum measures
12 to meet, either in whole or in part, the requirements of the minimum measures.

13 **SECTION 8.** Exclusions from Post-Construction Practices. – The
14 post-construction practices required by Section 9 of this act shall not apply to any of the
15 following:

- 16 (1) Development in an area where the requirements of Section 9 of this act
17 are applicable that is conducted pursuant to one of the following
18 authorizations, provided that the authorization was obtained prior to
19 the effective date of the post-construction stormwater control
20 requirements in the area and the authorization is valid, unexpired,
21 unrevoked, and not otherwise terminated:
- 22 a. A building permit pursuant to G.S. 153A-357 or
23 G.S. 160A-417.
 - 24 b. A site-specific development plan as defined by
25 G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
 - 26 c. A phased development plan approved pursuant to
27 G.S. 153A-344.1 for a project located in the unincorporated
28 area of a county that is subject to the requirements of Section 9
29 of this act, if the Commission is responsible for implementation
30 of the requirements of Section 9 of this act, that shows:
 - 31 1. For the initial or first phase of development, the type and
32 intensity of use for a specific parcel or parcels, including
33 at a minimum, the boundaries of the project and a
34 subdivision plan that has been approved pursuant to
35 G.S. 153A-330 through G.S. 153A-335.
 - 36 2. For any subsequent phase of development, sufficient
37 detail so that implementation of the requirements of
38 Section 9 of this act to that phase of development would
39 require a material change in that phase of the plan.
 - 40 d. A vested right to the development under G.S. 153A-344(b),
41 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local
42 government that implements Section 9 of this act.
 - 43 e. A vested right to the development pursuant to common law.
- 44 (2) Redevelopment.

SECTION 9. Post-Construction Practices. –

(a) For post-construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:

- (1) Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
- (2) Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
- (3) Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
- (4) Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
- (5) Freshwater High Quality Waters (HQW) – 15A NCAC 2H.1006.
- (6) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
- (7) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 2B.0235.
- (8) The Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 2B.0258.
- (9) The Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 2B.0251.

(b) In order to fulfill the post-construction minimum 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 best management practices (BMPs), incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

(c) Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. The stormwater controls shall be appropriate to the project's level of density as follows:

- (1) Post-construction model practices for low-density projects. – A project that is located within one-half mile of and draining to Shellfish Resource Waters is a low-density project if it contains no more than twelve percent (12%) built-upon area. A project that is not located within one-half mile of Shellfish Resource Waters is a low-density project if it contains no more than twenty-four percent (24%) built-upon area or no more than two dwelling units per acre. Low-density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model

1 practices for low-density projects and locates the higher density in
2 upland areas and away from surface waters and drainageways to the
3 maximum extent practicable.

- 4 (2) Post-construction model practices for high-density projects. – A
5 project that is located within one-half mile of and draining to Shellfish
6 Resource Waters is a high-density project if it contains more than
7 twelve percent (12%) built-upon area. A project that is not located
8 within one-half mile of Shellfish Resource Waters is a high-density
9 project if it contains more than twenty-four percent (24%) built-upon
10 area or more than two dwelling units per acre. High-density projects
11 must use structural stormwater management systems that will control
12 and treat runoff from the first one inch of rain unless the project is in a
13 county that is subject to the Coastal Area Management Act of 1974, in
14 which case the project must use structural stormwater management
15 systems that will control and treat runoff from the first one and
16 one-half inches of rain. In addition, projects that are located within
17 one-half mile and draining to Shellfish Resource Waters must control
18 and treat the difference in the stormwater runoff from the
19 predevelopment and post-development conditions for the one-year, 24-
20 hour storm. The structural stormwater management system must also
21 meet the following design standards:

- 22 a. Draw down the treatment volume no faster than 48 hours, but
23 no slower than 120 hours.
24 b. Discharge the storage volume at a rate equal to or less than the
25 predevelopment discharge rate for the one-year, 24-hour storm.
26 c. Remove an eighty-five percent (85%) average annual amount of
27 Total Suspended Solids.
28 d. Meet the General Engineering Design Criteria set out in 15A
29 NCAC 02H .1008(c).
30 e. Wet detention ponds designed in accordance with the
31 requirements of subsection (h) of this section may be used for
32 projects draining to Class SA waters.

33 (d) Permittees, delegated programs, and regulated entities must require
34 built-upon areas to be located at least 30 feet landward of all perennial and intermittent
35 surface waters. For purposes of this section, a surface water shall be present if the
36 feature is shown on either the most recent version of the soil survey map prepared by
37 the Natural Resources Conservation Service of the United States Department of
38 Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle
39 topographic maps prepared by the United States Geologic Survey (USGS). Relief from
40 this requirement may be allowed when surface waters are not present in accordance
41 with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this
42 requirement may be pursued in accordance with subsection (a) of Section 11 of this act.

43 (e) Permittees, delegated programs, and regulated entities must implement or
44 require a fecal coliform reduction program that controls, to the maximum extent

1 practicable, the sources of fecal coliform. At a minimum, the program shall include the
2 development and implementation of an oversight program to ensure proper operation
3 and maintenance of on-site wastewater treatment systems for domestic wastewater. For
4 municipalities, this program may be coordinated with local county health departments.

5 (f) Permittees, delegated programs, and regulated entities must impose or require
6 recorded deed restrictions and protective covenants that ensure development activities
7 will maintain the project consistent with approved plans.

8 (g) Permittees, delegated programs, and regulated entities must implement or
9 require an operation and maintenance plan that ensures the adequate long-term
10 operation of the structural BMPs required by the program. The operation and
11 maintenance plan must require the owner of each structural BMP to submit a
12 maintenance inspection report on each structural BMP annually to the local program.

13 (h) For areas draining to Class SA waters, permittees, delegated programs, and
14 regulated entities must:

15 (1) Use BMPs that result in the highest degree of fecal coliform die-off
16 and control to the maximum extent practicable sources of fecal
17 coliform while still incorporating the stormwater controls required by
18 the project's density level.

19 (2) Implement a program to control the sources of fecal coliform to the
20 maximum extent practicable, including a pet waste management
21 component, which may be achieved by revising an existing litter
22 ordinance, and an on-site domestic wastewater treatment systems
23 component to ensure proper operation and maintenance of such
24 systems, which may be coordinated with local county health
25 departments.

26 (3) Prohibit new points of stormwater discharge to Class SA waters and
27 prohibit both increases in the volume of stormwater flow through
28 conveyances and increases in capacity of conveyances in existing
29 stormwater conveyance systems that drain to Class SA waters. Any
30 modification or redesign of a stormwater conveyance system within
31 the contributing drainage basin must not increase the net amount or
32 rate of stormwater discharge through existing outfalls to Class SA
33 waters. Diffuse flow of stormwater at a nonerosive velocity to a
34 vegetated buffer or other natural area capable of providing effective
35 infiltration of the runoff from the one-year, 24-hour storm shall not be
36 considered a direct point of stormwater discharge. Consideration shall
37 be given to soil type, slope, vegetation, and existing hydrology when
38 evaluating infiltration effectiveness.

39 (i) For areas draining to Trout Waters, permittees, delegated programs, and
40 regulated entities must:

41 (1) Use BMPs that avoid a sustained increase in the receiving water
42 temperature, while still incorporating the stormwater controls required
43 for the project's density level.

- 1 (2) Allow on-site stormwater treatment devices such as infiltration areas,
2 bioretention areas, and level spreaders as added controls.
- 3 (j) For areas draining to Nutrient Sensitive Waters, permittees, delegated
4 programs, and regulated entities must:
- 5 (1) Use BMPs that reduce nutrient loading, while still incorporating the
6 stormwater controls required for the project's density level. In areas
7 where the Department has approved a Nutrient Sensitive Water Urban
8 Stormwater Management Program, the provisions of that program
9 fulfill the nutrient loading reduction requirement. Nutrient Sensitive
10 Water Urban Stormwater Management Program requirements are
11 found in 15A NCAC 02B .0200.
- 12 (2) Implement a nutrient application management program for both
13 inorganic fertilizer and organic nutrients to reduce nutrients entering
14 waters of the State.
- 15 (k) For BMPs that require a separation from the seasonal high-water table, the
16 separation shall be provided by at least 12 inches of naturally occurring soil above the
17 seasonal high-water table.
- 18 (l) Nothing in this section shall limit, expand, or alter the requirement that a
19 discharge fully comply with all applicable State or federal water quality standards.

20 **SECTION 10.** Delegation. – A public entity that does not administer a Phase
21 II National Pollutant Discharge Elimination System (NPDES) permit for stormwater
22 management throughout the entirety of its planning jurisdiction and whose planning
23 jurisdiction includes a regulated coverage area under Section 4 of this act may submit a
24 stormwater management program for its regulated coverage area or a portion of its
25 regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c).
26 An ordinance or regulation adopted by a public entity shall at least meet and may
27 exceed the minimum requirements of Section 9 of this act. Two or more public entities
28 are authorized to establish a joint program and to enter into any agreements that are
29 necessary for the proper administration and enforcement of the program. The resolution,
30 memorandum of agreement, or other document that establishes any joint program must
31 be duly recorded in the minutes of the governing body of each public entity
32 participating in the program, and a certified copy of each resolution must be filed with
33 the Commission. The Commission shall review each proposed program submitted to it
34 to determine whether the submission is complete. Within 90 days after the receipt of a
35 complete submission, the Commission shall notify the public entity submitting the
36 program that it has been approved, approved with modifications, or disapproved. The
37 Commission shall only approve a program upon determining that its standards equal or
38 exceed those of Section 9 of this act. If the Commission determines that any public
39 entity is failing to administer or enforce an approved stormwater management program,
40 it shall notify the public entity in writing and shall specify the deficiencies of
41 administration and enforcement. If the public entity has not taken corrective action
42 within 30 days of receipt of notification from the Commission, the Commission shall
43 assume administration and enforcement of the program until such time as the public

1 entity indicates its willingness and ability to resume administration and enforcement of
2 the program.

3 **SECTION 11.(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 11.(b) Exemption.** – A municipality with a population of less
15 than 1,000, including a municipality designated as an urbanized area under the most
16 recent federal decennial census, is not required to obtain a Phase II National Pollutant
17 Discharge Elimination System (NPDES) permit for stormwater management unless the
18 municipality is shown to be contributing to an impairment of State waters, as
19 determined under the requirements of 33 U.S.C. § 1313(d).

20 **SECTION 11.(c) Waiver.** – The Department may waive the Phase II
21 National Pollutant Discharge Elimination System (NPDES) permit requirement
22 pursuant to 40 Code of Federal Regulations §§ 122.32(d) or (e) (1 July 2003 Edition).

23 **SECTION 12. Implementation Schedule.** – The requirements of this act
24 shall be implemented as follows:

25 (1) A regulated entity must apply within 18 months of notification by the
26 Department that the regulated entity is subject to regulation pursuant to
27 Sections 4, 5, or 6 of this act.

28 (2) Public education and outreach minimum measures shall be
29 implemented no later than 12 months from date of permit issuance.

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

32 (4) The Department shall include permit conditions that establish
33 schedules for implementation of each minimum measure of the
34 regulated entity's stormwater management program based on the
35 submitted application so that the regulated entity fully implements its
36 permitted program within five years from permit issuance.

37 **SECTION 13. Federal and State Projects.** – The Commission shall have
38 jurisdiction, to the exclusion of local governments, to issue a National Pollutant
39 Discharge Elimination System (NPDES) permit for stormwater management to a federal
40 or State agency that applies to all or part of the activities of the agency or that applies to
41 the particular project. If a federal or State agency does not hold a Phase I or Phase II
42 National Pollutant Discharge Elimination System (NPDES) permit for stormwater
43 management that applies to the particular project, then the project is subject to the
44 stormwater management requirements of this act as implemented by the Commission or

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

3 **SECTION 14.** 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 9 of this act but shall not impose any requirement on the permittee that
9 exceeds the standards set out in Section 9 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 15.** Additional Rule Making. – The Commission may adopt rules
17 to replace the rules that are disapproved as provided in subsection (a) of Section 1 of
18 this act. If the Commission adopts rules pursuant to this section, notwithstanding
19 G.S. 150B-19(4), the rules shall be substantively identical to the provisions of Sections
20 2 through 13 of this act. The Commission may reorganize or renumber any of the rules
21 to which this section applies at its discretion. Rules adopted pursuant to this section are
22 not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this
23 section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more
24 written objections had been received as provided by G.S. 150B-21.3(b2).

25 **SECTION 16.(a)** G.S. 47-29.1 is amended by adding a new subsection to
26 read:

27 "(h) A land-use restriction that provides for the maintenance of stormwater best
28 management practices or site consistency with approved stormwater project plans shall
29 be recorded as provided in G.S. 143-214.7(c1)."

30 **SECTION 16.(b)** G.S. 143-214.7 is amended by adding a new subsection to
31 read:

32 "(c1) Any land-use restriction providing for the maintenance of stormwater best
33 management practices or site consistency with approved stormwater project plans filed
34 pursuant to a rule of the Commission, local ordinance, or permit approved by the
35 Commission shall be enforced by any owner of the land on which the best management
36 practice or project is located, any adjacent property owners, any downstream property
37 owners who would be injured by failure to enforce the land-use restriction, any local
38 government having jurisdiction over any part of the land on which the best management
39 practice or project is located, or the Department through the remedies provided by any
40 provision of law that is implemented or enforced by the Department or by means of a
41 civil action, without first having exhausted any available administrative remedies. A
42 land-use restriction providing for the maintenance of stormwater best management
43 practices or site consistency with approved stormwater project plans filed pursuant to a
44 rule of the Commission, local ordinance, or permit approved by the Commission shall

1 not be declared unenforceable due to lack of privity of estate or contract, due to lack of
2 benefit to particular land, or due to lack of any property interest in particular land. Any
3 person who owns or leases a property subject to a land-use restriction under this section
4 shall abide by the land-use restriction."

5 **SECTION 17.(a)** County Stormwater Control Ordinances. – Article 23 of
6 Chapter 153A of the General Statutes is amended by adding a new section to read:

7 **"§ 153A-454. Stormwater control.**

8 (a) A county may adopt and enforce a stormwater control ordinance to protect
9 water quality and control water quantity. A county may adopt a stormwater
10 management ordinance pursuant to this Chapter, other applicable laws, or any
11 combination of these powers.

12 (b) A federal, State, or local government project shall comply with the
13 requirements of a county stormwater control ordinance unless the federal, State, or local
14 government agency has a National Pollutant Discharge Elimination System (NPDES)
15 stormwater permit that applies to the project. A county may take enforcement action to
16 compel a State or local government agency to comply with a stormwater control
17 ordinance that implements the National Pollutant Discharge Elimination System
18 (NPDES) stormwater permit issued to the county. To the extent permitted by federal
19 law, including Chapter 26 of Title 33 of the United States Code, a county may take
20 enforcement action to compel a federal government agency to comply with a
21 stormwater control ordinance.

22 (c) A county may implement illicit discharge detection and elimination controls,
23 construction site stormwater runoff controls, and post-construction runoff controls
24 through an ordinance or other regulatory mechanism to the extent allowable under State
25 law.

26 (d) A county that holds a National Pollutant Discharge Elimination System
27 (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance to establish
28 the stormwater control program necessary for the county to comply with the permit. A
29 county may adopt an ordinance that bans illicit discharges. A county may adopt an
30 ordinance that requires (i) deed restrictions and protective covenants to ensure that each
31 project, including the stormwater management system, will be maintained so as to
32 protect water quality and control water quantity and (ii) financial arrangements to
33 ensure that adequate funds are available for the maintenance and replacement costs of
34 the project."

35 **SECTION 17.(b)** City Stormwater Control Ordinances. – Part 8 of Article
36 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

37 **"§ 160A-459. Stormwater control.**

38 (a) A city may adopt and enforce a stormwater control ordinance to protect water
39 quality and control water quantity. A city may adopt a stormwater management
40 ordinance pursuant to this Chapter, its charter, other applicable laws, or any
41 combination of these powers.

42 (b) A federal, State, or local government project shall comply with the
43 requirements of a city stormwater control ordinance unless the federal, State, or local
44 government agency has a National Pollutant Discharge Elimination System (NPDES)

1 stormwater permit that applies to the project. A city may take enforcement action to
2 compel a State or local government agency to comply with a stormwater control
3 ordinance that implements the National Pollutant Discharge Elimination System
4 (NPDES) stormwater permit issued to the city. To the extent permitted by federal law,
5 including Chapter 26 of Title 33 of the United States Code, a city may take enforcement
6 action to compel a federal government agency to comply with a stormwater control
7 ordinance.

8 (c) A city may implement illicit discharge detection and elimination controls,
9 construction site stormwater runoff controls, and post-construction runoff controls
10 through an ordinance or other regulatory mechanism to the extent allowable under State
11 law.

12 (d) A city that holds a National Pollutant Discharge Elimination System
13 (NPDES) permit issued pursuant to G.S. 143-214.7 may adopt an ordinance, applicable
14 within its corporate limits and its planning jurisdiction, to establish the stormwater
15 control program necessary for the city to comply with the permit. A city may adopt an
16 ordinance that bans illicit discharges within its corporate limits and its planning
17 jurisdiction. A city may adopt an ordinance, applicable within its corporate limits and
18 its planning jurisdiction, that requires (i) deed restrictions and protective covenants to
19 ensure that each project, including the stormwater management system, will be
20 maintained so as to protect water quality and control water quantity and (ii) financial
21 arrangements to ensure that adequate funds are available for the maintenance and
22 replacement costs of the project.

23 (e) Unless the city requests the permit condition in its permit application, the
24 Environmental Management Commission may not require as a condition of a National
25 Pollutant Discharge Elimination System (NPDES) stormwater permit issued pursuant to
26 G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal
27 Regulations § 122.34(b)(3) (1 July 2003 Edition) in its extraterritorial jurisdiction."

28 **SECTION 18.** Construction of Act. –

- 29 (1) Except as specifically provided in Section 15 of this act, nothing in this
30 act shall be construed to limit, expand, or otherwise alter the authority
31 of the Environmental Management Commission or any unit of local
32 government.
- 33 (2) The exclusions from the requirement to obtain a Phase II National
34 Pollutant Discharge Elimination System (NPDES) permit set out in 40
35 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including
36 the exclusions for certain nonpoint source agricultural and silvicultural
37 activities, apply to the provisions of this act.
- 38 (3) This act shall not be construed to affect any delegation of any power or
39 duty by the Commission to the Department or subunit of the
40 Department.

41 **SECTION 19.** Certain Provisions of Act Not Codified; Set Out As Note. –

42 Except for Sections 16 and 17 of this act, notwithstanding G.S. 164-10, the Revisor of
43 Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall
44 set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning

1 this act to other sections of the General Statutes as the Revisor of Statutes deems
2 appropriate.

3 **SECTION 20.** Effective Date. – This act is effective retroactively to 1 July
4 2006. Sections 2 through 13 of this act expire when permanent rules to replace those
5 sections have become effective as provided by Section 15 of this act.