

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in this section, which incorporates, supplements, and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are addressed in Section .1000 of this Subchapter entitled "Stormwater Management," but may also be addressed in sections dedicated to particular water classifications or circumstances.

(b) Facilities and Regulated Entities (REs) subject to NPDES permitting shall be issued NPDES permits for stormwater discharges to surface waters in accordance with this Rule, Rules .0150 through .0153 of this Subchapter, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 (1 July 2015 Edition) which are hereby incorporated by reference, not including subsequent amendments and editions. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. State regulations may be accessed at <http://www.ncoah.com/rules>.

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

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

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

- (1) "Division" means the Division of Energy, Mineral, and Land Resources in the Department.
- (2) "MS4" means municipal separate storm sewer system.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county exercises the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United States, the State, a city, village, township, county, school district, public college or university, single-purpose governmental agency, or any other governing body that is created by federal or State law.
- (5) "Regulated entity" means any public entity that must obtain a National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:
 - (a) waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301;
 - (b) waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. 1531, et seq.), as amended; or
 - (c) waters for which the "best usage," as described by the classification system set forth in 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0301 have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. 1313, which is incorporated herein by reference, not including subsequent amendments and editions. This federal code may be accessed at no cost at <http://www.gpo.gov/fdsys/>.

- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to have an "adverse impact," as that term is defined in 15A NCAC 02H Rule .1002 of this Subchapter, on the quality and best usage of the water body. "Best usage" of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300.
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan, and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

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

15A NCAC 02H .0151 NPDES MS4 STORMWATER: DESIGNATION AND PETITION PROCESS

(a) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through the State designation process, or under a total maximum daily load (TMDL) implementation plan, as provided in this Paragraph.

- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 CFR 122.32. These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below:
 - (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 - (i) discharges stormwater that has the potential to have an "adverse impact," as that term is defined in Rule .1002 of this Subchapter, on water quality; or
 - (ii) serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units, and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.
 - (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. This list shall be published on the Division website at <http://portal.ncdenr.org/web/lr/stormwater>. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for 30 days from the date of publication.
 - (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
 - (i) the public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years;
 - (ii) the public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years;
 - (iii) the population of the public entity is more than 15 percent greater than its population two years prior to the publication of the list identifying the public entity as a candidate for designation.
 - (iv) the municipal separate storm sewer system (MS4) discharges stormwater that has adverse impacts on water quality; or

- (v) the municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the best usages.
 - (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a NPDES permit for stormwater management shall be submitted to the Commission.
 - (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.
 - (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313, which are incorporated herein by reference. This federal code [may be accessed at no cost at <http://www.gpo.gov/fdsys/>]. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a NPDES permit for stormwater management shall be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.
- (b) Petition Process. A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a NPDES permit for stormwater management as follows:
- (1) Connected discharge petition. An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate NPDES permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate NPDES permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).
 - (2) Adverse impact petition. Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a NPDES permit for stormwater management as follows:
 - (A) Petition review. The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a NPDES permit for stormwater management if the petitioner shows any of the following:
 - (i) the municipal separate storm sewer system (MS4) or the discharge discharges stormwater or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation;
 - (ii) the municipal separate storm sewer system (MS4) or the discharge is a significant contributor of pollutants to receiving waters; or
 - (iii) the municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. 1313.
 - (B) Types of evidence for required showing. Petitioners may make the showing of adverse impact required by Part (b)(2)(A) of this Rule by providing to the Commission the following information:
 - (i) monitoring data that includes representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities;

- (ii) scientific or technical literature that supports the sampling methods;
 - (iii) studies and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;
 - (iv) a map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including surface waters, major roads, and political boundaries; and areas of concern regarding water quality;
 - (v) for stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded; or
 - (vi) for stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.
- (C) Water quality protection program offset. If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a NPDES permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the best usages. The Commission may deny the petition if it finds that existing water quality protection programs are adequate to address stormwater impacts on sensitive receiving waters and to ensure compliance with a TMDL implementation plan.
- (3) Petition administration. The Commission shall process petitions in the following manner:
- (A) A separate petition shall be filed for each municipal separate storm sewer system (MS4) or discharge.
 - (B) The Commission shall evaluate petitions that contain all information required by Part (2)(B) of this Paragraph. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional information and the Commission shall determine, within 90 days of receipt of the additional information, whether the information completes the petition.
 - (C) The petitioner shall provide to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge a copy of the petition and a copy of any subsequent additional information submitted to the Commission within 48 hours of each submittal.
 - (D) The Commission shall post all petitions on the Division website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program> and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for 30 days from the date of posting.
 - (E) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment period and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.
 - (F) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.
 - (i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a

NPDES permit for stormwater management, any other petitions for the same municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the NPDES permit for stormwater management.

(ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a NPDES permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge shall present new information as required by Part (2)(B) of this Paragraph or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as incomplete.

(G) The Commission shall evaluate a petition within 180 days of the date on which it is determined to contain all information required by Part (2)(B) of this Paragraph. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a NPDES permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater shall submit its application for a NPDES permit for stormwater management within 18 months of the date of notification.

(c) Exemption. A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a NPDES permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. 1313(d).

(d) Waiver. The Department may waive the requirement for a NPDES permit for stormwater management pursuant to 40 CFR 122.32(d) or (e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; Eff. July 3, 2012; Readopted Eff. January 1, 2017.

15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS

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

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

(a) Permit Standards. To obtain a NPDES permit for stormwater management, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six "minimum control measures" required by 40 CFR 122.34(b). These federal regulations may be accessed at no cost at <http://www.gpo.gov/fdsys/>. The evaluation of the post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall be conducted as provided in Rule .1017 of this Subchapter. Regulated entities may propose using any existing State or local program that relates to the minimum control measures to meet, either in whole or in part, the requirements of the minimum control measures.

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

- (1) a regulated entity shall apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b) and Rule .1016 of this Subchapter;
- (2) public education and outreach minimum measures shall be implemented within 12 months from date of permit issuance;
- (3) a regulated entity shall implement its post-construction program no later than 24 months from the date the permit is issued; and
- (4) the Department shall include permit conditions that establish schedules for implementation of each minimum control measure of the regulated entity's stormwater management program based on the submitted

application so that the regulated entity implements its permitted program within five years from permit issuance.

(c) Federal and State Projects. The Commission shall have jurisdiction, to the exclusion of local governments, to issue a NPDES permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a MS4 NPDES permit for stormwater management that applies to the particular project within North Carolina, then the project shall be subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit. The Commission shall develop and issue a NPDES general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 CFR 122.34(b)(5) shall require a permittee to meet the standards set forth in Rule .1017 of this Subchapter. After the Commission has issued a National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The notice of intent shall be submitted to the Division accompanied by the application fee as set forth in G.S. 143-215.3D. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a NPDES permit for stormwater management set out in 40 CFR 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

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

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2006-246; S.L. 2014-1; Eff. July 3, 2012;
Readopted Eff. January 1, 2017.

15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES

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