

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

Short Title: Stormwater Management 2006.

(Public)

Sponsors:

Referred to:

May 18, 2006

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 The General Assembly of North Carolina enacts:

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

10 15A NCAC 2H.1014 (Stormwater Management for Urbanizing Areas)

11 15A NCAC 2H.1015 (Urbanizing Area Definitions)

12 15A NCAC 2H.1016 (Urbanizing County Designations)

13 15A NCAC 2H.1017 (Application Schedule and Required Contents)

14 15A NCAC 2H.1018 (Post-Construction Model Practices)

15 15A NCAC 2H.1019 (Exceptions)

16 15A NCAC 2H.0126 (Stormwater Discharges)

17 15A NCAC 2H.0150 (Definitions)

18 15A NCAC 2H.0151 (Public Entity Designations)

19 15A NCAC 2H.0152 (Petitions)

20 15A NCAC 2H.0153 (Application Schedule and Required Contents)

21 15A NCAC 2H.0154 (Implementation Schedule)

22 15A NCAC 2H.0155 (Post-Construction Model Practices)

23 15A NCAC 2H.0156 (Exceptions)

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

26 "**SECTION 15.** This act is effective when it becomes law and expires ~~1 October~~
27 2011, 1 July 2006."

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

- 3 (1) The definitions set out in 40 Code of Federal Regulations § 122.2
4 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003
5 Edition).
- 6 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 7 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of
8 Terms).
- 9 (4) The definitions set out in 15A NCAC 2H .1002 (Definitions), except
10 for the definitions of "Built-upon area", "Development", and
11 "Redevelopment", which are defined below.
- 12 (5) "One-year, 24-hour storm" means a rainfall of an intensity expected to
13 be equaled or exceeded, on average, once in 12 months and with a
14 duration of 24 hours.
- 15 (6) "BMP" means Best Management Practice.
- 16 (7) "Built-upon area" means that portion of a project that is covered by
17 impervious or partially impervious surface including, but not limited to,
18 buildings; pavement and gravel areas such as roads, parking lots,
19 and paths; and recreation facilities such as tennis courts. "Built-upon
20 area" does not include a wooden slatted deck, the water area of a
21 swimming pool, or pervious or partially pervious paving material to
22 the extent that the paving material absorbs water or allows water to
23 infiltrate through the paving material.
- 24 (8) "Development" means any land-disturbing activity that increases the
25 amount of impervious or partially pervious cover on a land area or that
26 otherwise decreases the infiltration of precipitation into the soil.
- 27 (9) "Division" means the Division of Water Quality in the Department.
- 28 (10) "Planning jurisdiction" means the territorial jurisdiction within which a
29 municipality exercises the powers authorized by Article 19 of Chapter
30 160A of the General Statutes, or a county may exercise the powers
31 authorized by Article 18 of Chapter 153A of the General Statutes.
- 32 (11) "Public entity" means the United States; the State; a city, village,
33 township, county, school district, public college or university, or
34 single-purpose governmental agency; or any other governing body that
35 is created by federal or State law.
- 36 (12) "Redevelopment" means any land-disturbing activity that does not
37 result in a net increase in impervious or partially pervious cover on a
38 land area and that provides equal or greater stormwater control than
39 the previous development.
- 40 (13) "Regulated entity" means any public entity that must obtain a Phase II
41 National Pollutant Discharge Elimination System (NPDES) permit for
42 stormwater management for its municipal separate storm sewer system
43 (MS4).
- 44 (14) "Sensitive receiving waters" means any of the following:

- 1 a. Waters that are classified as high quality, outstanding resource,
2 shellfish, trout, or nutrient-sensitive waters in accordance with
3 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for
4 Assignment of Water Quality Standards – General Procedures).
5 b. Waters that are occupied by or designated as critical habitat for
6 aquatic animal species that are listed as threatened or
7 endangered by the United States Fish and Wildlife Service or
8 the National Marine Fisheries Service under the provisions of
9 the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87
10 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
11 c. Waters for which the designated use, as described by the
12 classification system set out in subsections (c), (d), and (e) of
13 15A NCAC 2B .0101 (Procedures for Assignment of Water
14 Quality Standards – General Procedures), have been determined
15 to be impaired in accordance with the requirements of
16 subsection (d) of 33 U.S.C. § 1313.
- 17 (15) "Shellfish resource waters" means Class SA waters that contain an
18 average concentration of 500 parts per million of natural chloride ion.
19 Average concentration is determined by averaging the chloride
20 concentrations of five water samples taken one-half mile downstream
21 from the project site that are taken on separate days, within one hour of
22 high tide, and not within 48 hours following a rain event. The chloride
23 ion concentrations are to be determined by a State-certified laboratory.
- 24 (16) "Significant contributor of pollutants" means a municipal separate
25 storm sewer system (MS4) or a discharge that contributes to the
26 pollutant loading of a water body or that destabilizes the physical
27 structure of a water body such that the contribution to pollutant loading
28 or the destabilization may reasonably be expected to adversely affect
29 the quality and uses of the water body. Uses of a water body shall be
30 determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B
31 .0222 (Classifications and Water Quality Standards Applicable to
32 Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B
33 .0300, et seq. (Assignment of Stream Classifications).
- 34 (17) "Total maximum daily load (TMDL) implementation plan" means a
35 written, quantitative plan and analysis for attaining and maintaining
36 water quality standards in all seasons for a specific water body and
37 pollutant.

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

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

42 (a) Development that cumulatively disturbs one acre or more of land located in
43 the unincorporated area of a county shall comply with the standards set forth in Section
44 9 of this act beginning 1 July 2007 if the development is located in:

- 1 (1) An area that is designated as an urbanized area under the most recent
2 federal decennial census.
- 3 (2) The unincorporated area of a county outside of a municipality
4 designated as an urbanized area under the most recent federal
5 decennial census that extends:
- 6 a. One mile beyond the corporate limits of a municipality with a
7 population of less than 10,000 individuals.
- 8 b. Two miles beyond the corporate limits of a municipality with a
9 population of 10,000 or more individuals but less than 25,000
10 individuals.
- 11 c. Three miles beyond the corporate limits of a municipality with
12 a population of 25,000 or more individuals.
- 13 (3) An area delineated pursuant to subsection (b) of this section.
- 14 (4) A county that contains an area that is designated as an urbanized area
15 under the most recent federal decennial census in which the
16 unduplicated sum of: (i) the area that is designated as an urbanized
17 area under the most recent federal decennial census; (ii) the area
18 described in subdivision (2) of subsection (a) of this section; (iii) the
19 area delineated pursuant to subsection (b) of this section; (iv) the
20 jurisdiction of a regulated entity designated pursuant to Section 5 of
21 this act; (v) the area that is regulated by a Phase II National Pollutant
22 Discharge Elimination System (NPDES) permit for stormwater
23 management required pursuant to Section 6 of this act; and (vi) areas
24 in the county that are subject to any of the stormwater management
25 programs administered by the Division equal or exceed seventy-five
26 percent (75%) of the total geographic area of the county. For purposes
27 of this subdivision, the stormwater programs administered by the
28 Division are:
- 29 a. Water Supply Watershed I (WS-I) – 15A NCAC 2B.0212.
- 30 b. Water Supply Watershed II (WS-II) – 15A NCAC 2B.0214.
- 31 c. Water Supply Watershed III (WS-III) – 15A NCAC 2B.0215.
- 32 d. Water Supply Watershed IV (WS-IV) – 15A NCAC 2B.0216.
- 33 e. High Quality Waters (HQW) – 15A NCAC 2H.1006.
- 34 f. Outstanding Resource Waters (ORW) – 15A NCAC 2H.1007.
- 35 g. The Coastal Stormwater Program – 15A NCAC 2H.1005.
- 36 h. The Neuse River Basin Nutrient Sensitive Waters (NSW)
37 Management Strategy – 15A NCAC 2B.0235.
- 38 i. The Tar-Pamlico River Basin Nutrient Sensitive (NSW)
39 Management Strategy – 15A NCAC 2B.0258.
- 40 j. The Randleman Lake Water Supply Watershed Nutrient
41 Management Strategy – 15A NCAC 2B.0251.
- 42 k. Other Environmental Management Commission Nutrient
43 Sensitive Waters (NSW) Classifications – 15A NCAC 2B.0223.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 1. The municipal separate storm sewer system (MS4) or the
32 discharge discharges or has the potential to discharge
33 stormwater that may cause or contribute to a water
34 quality standard violation.

35 2. The municipal separate storm sewer system (MS4) or the
36 discharge provides a significant contribution of
37 pollutants to receiving waters.

38 3. The municipal separate storm sewer system (MS4) or the
39 discharge is specifically listed by name as a source of
40 pollutants for urban stormwater in a total maximum daily
41 load (TMDL) implementation plan developed in
42 accordance with subsections (d) and (e) of 33 U.S.C. §
43 1313.

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

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

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

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

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

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

- 14 (1) Development in an area where the requirements of Section 9 of this act
15 are applicable that is conducted pursuant to one of the following
16 authorizations, provided that the authorization was obtained prior to
17 the effective date of the post-construction stormwater control
18 requirements in the area and the authorization is valid, unexpired,
19 unrevoked, and not otherwise terminated:
- 20 a. A building permit pursuant to G.S. 153A-357 or
21 G.S. 160A-417.
 - 22 b. A site-specific development plan as defined by
23 G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5).
 - 24 c. A phased development plan approved pursuant to
25 G.S. 153A-344.1 or G.S. 160A-385.1 that shows:
 - 26 1. For the initial or first phase of development, the type and
27 intensity of use for a specific parcel or parcels, including
28 at a minimum, the boundaries of the project and a
29 subdivision plan that has been approved pursuant to
30 G.S. 153A-330 through G.S. 153A-335 or
31 G.S. 160A-371 through G.S. 160A-376.
 - 32 2. For any subsequent phase of development, sufficient
33 detail so that implementation of the requirements of
34 Section 9 of this act to that phase of development would
35 require a material change in that phase of the plan.
 - 36 d. A vested right to the development under G.S. 153A-344(b),
37 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local
38 government that implements Section 9 of this act.
 - 39 e. A vested right to the development pursuant to common law.

40 (2) Redevelopment.

41 **SECTION 9.** Post-Construction Practices. –

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

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

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

13 (b) In order to fulfill the post-construction minimum measure program
14 requirement, a permittee, delegated program, or regulated entity may use the
15 Department's model ordinance, design its own post-construction practices based on the
16 Department's guidance on scientific and engineering standards for best management
17 practices (BMPs), incorporate the post-construction model practices described in this
18 act, or develop its own comprehensive watershed plan that is determined by the
19 Department to meet the post-construction stormwater management measure required by
20 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).

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

- 26 (1) Post-construction model practices for low-density projects. – A project
27 that is located within one-half mile of and draining to Shellfish
28 Resource Waters is a low-density project if it contains no more than
29 twelve percent (12%) built-upon area. A project that is not located
30 within one-half mile of Shellfish Resource Waters is a low-density
31 project if it contains no more than twenty-four percent (24%)
32 built-upon area and no more than two dwelling units per acre. Low-
33 density projects must use vegetated conveyances to the maximum
34 extent practicable to transport stormwater runoff from the project.
35 On-site stormwater treatment devices such as infiltration areas,
36 bioretention areas, and level spreaders may also be used as added
37 controls for stormwater runoff. A project with an overall density at or
38 below the low-density thresholds, but containing areas with a density
39 greater than the overall project density, may be considered low density
40 as long as the project meets or exceeds the post-construction model
41 practices for low-density projects and locates the higher density in
42 upland areas and away from surface waters and drainageways to the
43 maximum extent practicable.

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

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

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

41 (e) Permittees, delegated programs, and regulated entities must implement or
42 require a fecal coliform reduction program that controls, to the maximum extent
43 practicable, the sources of fecal coliform. At a minimum, the program shall include the
44 development and implementation of an oversight program to ensure proper operation

1 and maintenance of on-site wastewater treatment systems for domestic wastewater. For
2 municipalities, this program may be coordinated with local county health departments.

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

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

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

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

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

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

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

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

42 (2) Allow on-site stormwater treatment devices such as infiltration areas,
43 bioretention areas, and level spreaders as added controls.

1 (j) For areas draining to Nutrient Sensitive Waters, permittees, delegated
2 programs, and regulated entities must:

3 (1) Use BMPs that reduce nutrient loading, while still incorporating the
4 stormwater controls required for the project's density level. In areas
5 where the Department has approved a Nutrient Sensitive Water Urban
6 Stormwater Management Program, the provisions of that program
7 fulfill the nutrient loading reduction requirement. Nutrient Sensitive
8 Water Urban Stormwater Management Program requirements are
9 found in 15A NCAC 02B .0200.

10 (2) Implement a nutrient application management program for both
11 inorganic fertilizer and organic nutrients to reduce nutrients entering
12 waters of the State.

13 (k) For BMPs that require a separation from the seasonal high-water table, the
14 separation shall be no less than 12 inches of naturally occurring soil above the seasonal
15 high-water table.

16 (l) Nothing in this section shall limit, expand, or alter the requirement that a
17 discharge fully comply with all applicable State or federal water quality standards.

18 **SECTION 10.** 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 4 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 Section 9 of this act. Two or more public entities
26 are authorized to establish a joint program and to enter into any agreements that are
27 necessary for the proper administration and enforcement of the program. The resolution,
28 memorandum of agreement, or other document that establishes any joint program must
29 be duly recorded in the minutes of the governing body of each public entity
30 participating in the program, and a certified copy of each resolution must be filed with
31 the Commission. The Commission shall review each proposed program submitted to it
32 to determine whether the submission is complete. Within 90 days after the receipt of a
33 complete submission, the Commission shall notify the public entity submitting the
34 program that it has been approved, approved with modifications, or disapproved. The
35 Commission shall only approve a program upon determining that its standards equal or
36 exceed those of Section 9 of this act. If the Commission determines that any public
37 entity is failing to administer or enforce an approved stormwater management program,
38 it shall notify the public entity in writing and shall specify the deficiencies of
39 administration and enforcement. If the public entity has not taken corrective action
40 within 30 days of receipt of notification from the Commission, the Commission shall
41 assume administration and enforcement of the program until such time as the public
42 entity indicates its willingness and ability to resume administration and enforcement of
43 the program.

1 **SECTION 11.(a)** Exceptions. – The Department or an appropriate local
2 authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant
3 exceptions from the 30-foot landward location of built-upon area requirement as well as
4 the deed restrictions and protective covenants requirement as follows:

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

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

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

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

1 practically accomplished in a manner which would avoid or
2 result in less adverse impact to surface waters.

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

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

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

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

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

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

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

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

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

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

35 **SECTION 13.** Federal and State Projects. – The Commission shall have
36 jurisdiction, to the exclusion of local governments, to issue a National Pollutant
37 Discharge Elimination System (NPDES) permit for stormwater management to a federal
38 or State agency that applies to all or part of the activities of the agency or that applies to
39 the particular project. If a federal or State agency does not hold a Phase I or Phase II
40 National Pollutant Discharge Elimination System (NPDES) permit for stormwater
41 management that applies to the particular project, then the project is subject to the
42 stormwater management requirements of this act as implemented by the Commission or
43 by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to
44 the implementation of this act.

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

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

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

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

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

30 "(c1) Any land-use restriction providing for the maintenance of stormwater best
31 management practices or site consistency with approved stormwater project plans filed
32 pursuant to a rule of the Commission, local ordinance, or permit approved by the
33 Commission shall be enforced by any owner of the land on which the best management
34 practice or project is located, any adjacent property owners, any downstream property
35 owners who would be injured by failure to enforce the land-use restriction, any local
36 government having jurisdiction over any part of the land on which the best management
37 practice or project is located, or the Department through the remedies provided by any
38 provision of law that is implemented or enforced by the Department or by means of a
39 civil action, without first having exhausted any available administrative remedies. A
40 land-use restriction providing for the maintenance of stormwater best management
41 practices or site consistency with approved stormwater project plans filed pursuant to a
42 rule of the Commission, local ordinance, or permit approved by the Commission shall
43 not be declared unenforceable due to lack of privity of estate or contract, due to lack of
44 benefit to particular land, or due to lack of any property interest in particular land. Any

1 person who owns or leases a property subject to a land-use restriction under this section
2 shall abide by the land-use restriction."

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

5 **"§ 153A-453. Stormwater control.**

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

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

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

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

33 **SECTION 17.(b)** City Stormwater Control Ordinances. – Part 8 of Article
34 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

35 **"§ 160A-459. Stormwater control.**

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

40 (b) A federal, State, or local government project shall comply with the
41 requirements of a city stormwater control ordinance unless the federal, State, or local
42 government agency has a National Pollutant Discharge Elimination System (NPDES)
43 stormwater permit that applies to the project. A city may take enforcement action to
44 compel a State or local government agency to comply with a stormwater control

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

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

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

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

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

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

35 Except for Sections 16 and 17 of this act, notwithstanding G.S. 164-10, the Revisor of
36 Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall
37 set out the text of this act as a note to G.S. 143-214.7 and may make notes concerning
38 this act to other sections of the General Statutes as the Revisor of Statutes deems
39 appropriate.

40 **SECTION 20.** Effective Date. – This act is effective retroactively to 1 July
41 2006. Sections 2 through 13 of this act expire when permanent rules to replace those
42 sections have become effective as provided by Section 15 of this act.