

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 294
Commerce Committee Substitute Adopted 5/14/13
Corrected Copy 5/14/13

Short Title: Allow Use of DOT Stormwater BMPs.

(Public)

Sponsors:

Referred to:

March 14, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW ENTITIES REGULATED UNDER PHASE II OF THE NATIONAL
3 POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM TO UTILIZE THE
4 DEPARTMENT OF TRANSPORTATION'S BEST MANAGEMENT PRACTICES
5 TOOLBOX FOR LINEAR TRANSPORTATION PROJECTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Section 9 of S.L. 2006-246, as amended by S.L. 2008-198, reads as
8 rewritten:

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

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

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

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

31 (b1) In order to fulfill the post-construction minimum measure requirement for linear
32 transportation projects, including private transportation projects constructed to North Carolina
33 Department of Transportation standards that will be conveyed to the State upon completion, a
34 permittee, delegated program, or regulated entity may use the Stormwater Best Management
35 Practices Toolbox developed by the North Carolina Department of Transportation.



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

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

21 (2) Post-construction model practices for high-density projects. – A project that
22 is located within one-half mile of and draining to Shellfish Resource Waters
23 is a high-density project if it contains more than twelve percent (12%)
24 built-upon area. A project that is not located within one-half mile of
25 Shellfish Resource Waters is a high-density project if it contains more than
26 twenty-four percent (24%) built-upon area or more than two dwelling units
27 per acre. High-density projects must use structural stormwater management
28 systems that will control and treat runoff from the first one inch of rain
29 unless the project is in a county that is subject to the Coastal Area
30 Management Act of 1974, in which case the project must use structural
31 stormwater management systems that will control and treat runoff from the
32 first one and one-half inches of rain. In addition, projects that are located
33 within one-half mile and draining to Shellfish Resource Waters must control
34 and treat the difference in the stormwater runoff from the predevelopment
35 and post-development conditions for the one-year, 24- hour storm. The
36 structural stormwater management system must also meet the following
37 design standards:

- 38 a. Draw down the treatment volume no faster than 48 hours, but no
39 slower than 120 hours.
- 40 b. Discharge the storage volume at a rate equal to or less than the
41 predevelopment discharge rate for the one-year, 24-hour storm.
- 42 c. Remove an eighty-five percent (85%) average annual amount of
43 Total Suspended Solids.
- 44 d. Meet the General Engineering Design Criteria set out in 15A NCAC
45 02H .1008(c).
- 46 e. Wet detention ponds designed in accordance with the requirements
47 of subsection (h) of this section may be used for projects draining to
48 Class SA waters.

49 (d) Permittees, delegated programs, and regulated entities must require built-upon areas
50 to be located at least 30 feet landward of all perennial and intermittent surface waters. For
51 purposes of this section, a surface water shall be present if the feature is shown on either the

1 most recent version of the soil survey map prepared by the Natural Resources Conservation
2 Service of the United States Department of Agriculture or the most recent version of the
3 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States
4 Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters
5 are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition,
6 an exception to this requirement may be pursued in accordance with subsection (a) of Section
7 11 of this act.

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

14 (f) Permittees, delegated programs, and regulated entities must impose or require
15 recorded restrictions and protective covenants to be recorded on the property in the Office of
16 the Register of Deeds in the county where the property is located prior to the issuance of a
17 certificate of occupancy in order to ensure that development activities will maintain the project
18 consistent with approved plans.

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

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

- 26 (1) Use BMPs that result in the highest degree of fecal coliform die-off and
27 control to the maximum extent practicable sources of fecal coliform while
28 still incorporating the stormwater controls required by the project's density
29 level.
- 30 (2) Implement a program to control the sources of fecal coliform to the
31 maximum extent practicable, including a pet waste management component,
32 which may be achieved by revising an existing litter ordinance, and an
33 on-site domestic wastewater treatment systems component to ensure proper
34 operation and maintenance of such systems, which may be coordinated with
35 local county health departments.
- 36 (3) Prohibit new points of stormwater discharge to Class SA waters and prohibit
37 both increases in the volume of stormwater flow through conveyances and
38 increases in capacity of conveyances in existing stormwater conveyance
39 systems that drain to Class SA waters. Any modification or redesign of a
40 stormwater conveyance system within the contributing drainage basin must
41 not increase the net amount or rate of stormwater discharge through existing
42 outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive
43 velocity to a vegetated buffer or other natural area capable of providing
44 effective infiltration of the runoff from the one-year, 24-hour storm shall not
45 be considered a direct point of stormwater discharge. Consideration shall be
46 given to soil type, slope, vegetation, and existing hydrology when evaluating
47 infiltration effectiveness.

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

- 1 (1) Use BMPs that avoid a sustained increase in the receiving water
- 2 temperature, while still incorporating the stormwater controls required for
- 3 the project's density level.
- 4 (2) Allow on-site stormwater treatment devices such as infiltration areas,
- 5 bioretention areas, and level spreaders as added controls.
- 6 (j) For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and
- 7 regulated entities must:
- 8 (1) Use BMPs that reduce nutrient loading, while still incorporating the
- 9 stormwater controls required for the project's density level. In areas where
- 10 the Department has approved a Nutrient Sensitive Water Urban Stormwater
- 11 Management Program, the provisions of that program fulfill the nutrient
- 12 loading reduction requirement. Nutrient Sensitive Water Urban Stormwater
- 13 Management Program requirements are found in 15A NCAC 02B .0200.
- 14 (2) Implement a nutrient application management program for both inorganic
- 15 fertilizer and organic nutrients to reduce nutrients entering waters of the
- 16 State.
- 17 (k) For BMPs that require a separation from the seasonal high-water table, the
- 18 separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal
- 19 high-water table.
- 20 (l) Nothing in this section shall limit, expand, or alter the requirement that a discharge
- 21 fully comply with all applicable State or federal water quality standards."
- 22 **SECTION 2.** This act becomes effective January 1, 2012.