

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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**SENATE BILL 1210*
Agriculture/Environment/Natural Resources Committee Substitute Adopted
6/29/04**

Short Title: Phase II Stormwater Management-1. (Public)

Sponsors:

Referred to:

May 20, 2004

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE TEMPORARY IMPLEMENTATION OF
3 FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS BY
4 PROVIDING: (1) THAT LOCAL GOVERNMENT APPLICATIONS FOR
5 PHASE II STORMWATER PERMITS THAT WERE SUBMITTED IN
6 ACCORDANCE WITH THE TEMPORARY STORMWATER RULE WILL BE
7 DEEMED TIMELY RECEIVED; (2) STANDARDS FOR THE EVALUATION OF
8 APPLICATIONS FOR PHASE II STORMWATER PERMITS; (3) AN
9 EXEMPTION FROM PHASE II STORMWATER PERMIT REQUIREMENTS
10 FOR CERTAIN SMALL MUNICIPALITIES; (4) THAT NEW DEVELOPMENT
11 AND REDEVELOPMENT LOCATED IN A REGULATED COVERAGE AREA
12 MUST COMPLY WITH THE STORMWATER MANAGEMENT RULE; (5)
13 THAT THE ENVIRONMENTAL MANAGEMENT COMMISSION WILL
14 ADMINISTER AND ENFORCE THE STORMWATER MANAGEMENT RULE
15 IN A REGULATED COVERAGE AREA UNLESS A COUNTY VOLUNTARILY
16 UNDERTAKES TO IMPLEMENT A LOCAL STORMWATER MANAGEMENT
17 PROGRAM; (6) FOR THE COORDINATION OF PHASE II STORMWATER
18 MANAGEMENT PROGRAMS AND OTHER EXISTING STATE PROGRAMS
19 THAT REGULATE STORMWATER IN ORDER TO AVOID CONFLICTING,
20 DUPLICATIVE, OR INCONSISTENT STORMWATER MANAGEMENT
21 REQUIREMENTS; (7) THAT A LOCAL GOVERNMENT MAY OPT TO BE
22 COVERED UNDER A GENERAL STORMWATER PERMIT DEVELOPED BY
23 THE ENVIRONMENTAL MANAGEMENT COMMISSION; (8) DEADLINES
24 FOR WHEN THE ENVIRONMENTAL MANAGEMENT COMMISSION MUST
25 MAKE CERTAIN PHASE II STORMWATER PERMITTING DECISIONS; (9)
26 DESIGNATION AND PETITION PROCESSES BY WHICH ADDITIONAL
27 LOCAL GOVERNMENTS AND OTHER ENTITIES MAY BE REQUIRED TO
28 OBTAIN A PHASE II STORMWATER PERMIT; (10) FOR THE

1 DEVELOPMENT OF A STORMWATER MODEL ORDINANCE AND
2 STORMWATER DESIGN MANUAL; (11) FOR THE ROLES OF STATE AND
3 LOCAL GOVERNMENTS IN REGULATING THE STORMWATER IMPACTS
4 OF FEDERAL AND STATE PROJECTS; (12) DEFINITIONS OF TERMS TO BE
5 USED IN THE IMPLEMENTATION OF THIS ACT; (13) THAT CERTAIN
6 AGRICULTURE AND FORESTRY ACTIVITIES ARE EXEMPT FROM PHASE
7 II STORMWATER PERMIT REQUIREMENTS; AND (14) HOW THE ACT
8 SHALL BE CONSTRUED, AS RECOMMENDED BY THE ENVIRONMENTAL
9 REVIEW COMMISSION.

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** Phase II Stormwater Permit Application and Standards. – An
12 application for a Phase II National Pollutant Discharge Elimination System (NPDES)
13 permit for stormwater management submitted by an owner or operator of a small
14 municipal separate storm sewer system (MS4) located in whole or in part within an
15 urbanized area as designated by the 1990 or 2000 census by the Bureau of the Census
16 shall be deemed timely received if the application was submitted to the Department in
17 accordance with the application schedule set out in Section 6 of the temporary rule
18 adopted by the Environmental Management Commission on 10 October 2002. To
19 obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for
20 stormwater management under this section, an applicant shall develop, implement, and
21 enforce a stormwater management plan approved by the Commission that satisfies the
22 six minimum control measures required by 40 Code of Federal Regulations § 122.34(b)
23 (1 July 2003 Edition). The evaluation of the postconstruction stormwater management
24 measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003
25 Edition) shall be conducted as provided in the Stormwater Management Rule. A
26 municipality with a population of less than 1,000, including a municipality designated
27 by the 1990 or 2000 census, is not required to obtain a Phase II National Pollutant
28 Discharge Elimination System (NPDES) permit for stormwater management unless the
29 municipality is shown to be contributing to an impairment of State waters, as
30 determined under the requirements of 33 U.S.C. § 1313(d).

31 **SECTION 2.** New Development and Redevelopment in Unincorporated
32 Areas of Counties. –

- 33 (1) New development or redevelopment located in the unincorporated area
34 of a county shall comply with the standards set forth in the Stormwater
35 Management Rule beginning 1 July 2006 if the new development or
36 redevelopment is located in:
- 37 a. An area that is designated as an urbanized area under the 1990
38 or 2000 census by the Bureau of the Census.
 - 39 b. An area delineated pursuant to subdivision (2) of this section.
 - 40 c. A county in which the unduplicated sum of: (i) the area that is
41 designated as an urbanized area under the 1990 or 2000 census
42 by the Bureau of the Census; (ii) the area delineated pursuant to
43 subdivision 2 of this section; (iii) the jurisdiction of a regulated
44 entity designated pursuant to Section 7 of this act; and (iv) the

- 1 area that is regulated by a Phase II National Pollutant Discharge
2 Elimination System (NPDES) permit for stormwater
3 management required pursuant to Section 8 of this act equals or
4 exceeds eighty-five percent (85%) of the total geographic area
5 of the county.
- 6 (2) Delineation process. – The Commission shall delineate regulated
7 coverage areas as provided in this subdivision.
- 8 a. Schedule. – The Commission shall implement the delineation
9 process in accordance with the schedule for review and revision
10 of basinwide water quality management plans as provided in
11 G.S. 143-215.8B(c).
- 12 b. Potential candidate coverage areas. – The Commission shall
13 identify an area in the unincorporated area of a county only if
14 the area is outside a municipality that is designated as an
15 urbanized area by the 1990 or 2000 census by the Bureau of the
16 Census and the area:
- 17 1. Extends one mile beyond the corporate limits of a
18 municipality with a population of less than 10,000
19 individuals.
- 20 2. Extends two miles beyond the corporate limits of a
21 municipality with a population of 10,000 or more
22 individuals but less than 25,000 individuals.
- 23 3. Extends three miles beyond the corporate limits of a
24 municipality with a population of 25,000 or more
25 individuals.
- 26 c. Identification of candidate coverage areas. – The Commission
27 shall identify an area within a potential candidate coverage area
28 described in sub-subdivision b. of this subdivision as a
29 candidate coverage area if the discharge of stormwater within or
30 from the unincorporated area has the potential to adversely
31 impact water quality. An adverse impact on water quality
32 includes any activity that violates water quality standards,
33 including, but not limited to, any activity that impairs
34 designated uses or that has a significant biological or habitat
35 impact.
- 36 d. Notice and comment on candidacy. – The Commission shall
37 notify each public entity that is located in whole or in part in a
38 candidate coverage area. After notification of each public
39 entity, the Commission shall publish a map of the
40 unincorporated areas within the river basin that have been
41 identified as candidates for delineation as regulated coverage
42 areas. The Commission shall accept public comment on the
43 proposed delineation of a candidate coverage area as a regulated
44 coverage area for a period of not less than 30 days.

- 1 e. Delineation of regulated coverage areas. – After review of
2 public comment, the Commission shall delineate regulated
3 coverage areas. The Commission shall delineate a candidate
4 coverage area as a regulated coverage area only if the
5 Commission determines that the discharge of stormwater within
6 or from the candidate coverage area either:
- 7 1. Adversely impacts water quality.
 - 8 2. Results in a significant contribution of pollutants to
9 sensitive receiving waters, taking into account the
10 effectiveness of other applicable water quality protection
11 programs. To determine the effectiveness of other
12 applicable water quality protection programs, the
13 Commission shall consider the water quality of the
14 receiving waters and whether the waters support the uses
15 set out in subsections (c), (d), and (e) of 15A NCAC 2B
16 .0101 (Procedures for Assignment of Water Quality
17 Standards – General Procedures) and the specific
18 classification of the waters set out in 15A NCAC 2B
19 .0300, et seq. (Assignment of Stream Classifications).
- 20 f. Notice of delineation. – The Commission shall provide written
21 notice to each public entity that is located in whole or in part in
22 a candidate coverage area of its delineation determination. The
23 notice shall state the basis for the determination.
- 24 (3) Except as provided in this subdivision and Section 5 of this act, the
25 Commission shall administer and enforce the standards for new
26 development and redevelopment in the regulated coverage areas. To
27 the extent that the new development or redevelopment is located in a
28 municipal planning jurisdiction, the municipality shall administer and
29 enforce the standards. A public entity may request that the
30 Commission delegate administration and enforcement of the
31 stormwater management program to the public entity as provided in
32 Section 5 of this act.

33 **SECTION 3.** Coordination of Phase II and Other Stormwater Management
34 Programs. – In any circumstance where any stormwater control requirement under a
35 Phase II National Pollutant Discharge Elimination System (NPDES) permit for
36 stormwater management conflicts or overlaps with any stormwater control requirement
37 under any other water quality program, the most stringent requirement shall apply. The
38 Secretary of Environment and Natural Resources or the Secretary's designee shall
39 resolve any dispute as to whether there is a conflict or overlap between or among
40 stormwater management requirements and shall determine which requirement shall be
41 deemed the most stringent.

42 **SECTION 4.** General Permit. – The Commission shall develop and issue a
43 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for
44 stormwater management. The general permit requirements for postconstruction

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

12 **SECTION 5.** Delegation. – A public entity that does not administer a Phase
13 II National Pollutant Discharge Elimination System (NPDES) permit for stormwater
14 management throughout the entirety of its planning jurisdiction and whose planning
15 jurisdiction includes a regulated coverage area under Section 2 of this act may submit a
16 stormwater management program for its regulated coverage area or a portion of its
17 regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c).
18 An ordinance or regulation adopted by a public entity shall at least meet and may
19 exceed the minimum requirements of this act and the six minimum control measures
20 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or
21 more public entities are authorized to establish a joint program and to enter into any
22 agreements that are necessary for the proper administration and enforcement of the
23 program. The resolution, memorandum of agreement, or other document that establishes
24 any joint program must be duly recorded in the minutes of the governing body of each
25 public entity participating in the program, and a certified copy of each resolution must
26 be filed with the Commission. The Commission shall review each proposed program
27 submitted to it to determine whether the submission is complete. Within 90 days after
28 the receipt of a complete submission, the Commission shall notify the public entity
29 submitting the program that it has been approved, approved with modifications, or
30 disapproved. The Commission shall only approve a program upon determining that its
31 standards equal or exceed those of this act and the six minimum control measures
32 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the
33 Commission determines that any public entity is failing to administer or enforce an
34 approved stormwater management program, it shall notify the public entity in writing
35 and shall specify the deficiencies of administration and enforcement. If the public entity
36 has not taken corrective action within 30 days of receipt of notification from the
37 Commission, the Commission shall assume administration and enforcement of the
38 program until such time as the public entity indicates its willingness and ability to
39 resume administration and enforcement of the program.

40 **SECTION 6.** Phase II Stormwater Implementation Deadlines. –

- 41 (1) For an application for a Phase II National Pollutant Discharge
42 Elimination System (NPDES) permit for stormwater management
43 submitted by an owner or operator of a small municipal separate storm
44 sewer system (MS4) located in whole or in part within an urbanized

1 area as designated by the 1990 census by the Bureau of the Census, the
2 Commission shall send a draft permit decision to public notice by 1
3 November 2004.

4 (2) For an application for a Phase II National Pollutant Discharge
5 Elimination System (NPDES) permit for stormwater management
6 submitted by an owner or operator of a small municipal separate storm
7 sewer system (MS4) located in whole or in part within an urbanized
8 area as designated by the 2000 census by the Bureau of the Census, the
9 Commission shall send a draft permit decision to public notice by 1
10 May 2005.

11 (3) A public entity designated as a regulated entity pursuant to 40 Code of
12 Federal Regulations § 122.32 (1 July 2003 Edition) shall develop and
13 implement postconstruction stormwater management measures within
14 24 months of the date on which its Phase II National Pollutant
15 Discharge Elimination System (NPDES) permit for stormwater
16 management is issued.

17 (4) A public entity designated as a regulated entity pursuant to
18 subdivisions (2) and (3) of Section 7 of this act shall develop and
19 implement postconstruction stormwater management measures within
20 36 months of the date on which its Phase II National Pollutant
21 Discharge Elimination System (NPDES) permit for stormwater
22 management is issued.

23 **SECTION 7.** Designation of Regulated Entities. – A public entity that owns
24 or operates a municipal separate storm sewer system (MS4) may be designated as a
25 regulated entity through federal designation, through a State designation process, or
26 under a total maximum daily load (TMDL) implementation plan as provided in this
27 section.

28 (1) Federal designation. – A public entity that owns or operates a
29 municipal separate storm sewer system (MS4) may be designated as a
30 regulated entity pursuant to 40 Code of Federal Regulations § 122.32
31 (1 July 2003 Edition).

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

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

39 b. Identification of candidate regulated entities. – The
40 Commission shall identify a public entity as a candidate for
41 designation as a regulated entity if the municipal separate storm
42 sewer system (MS4) either:

43 1. Discharges stormwater that has the potential to adversely
44 impact water quality. An adverse impact on water quality

- 1 includes any activity that violates water quality
2 standards, including, but not limited to, any activity that
3 impairs designated uses or that has a significant
4 biological or habitat impact.
- 5 2. Serves a public entity that has not been designated
6 pursuant to subdivision (1) of this section and that has a
7 population of more than 10,000 and a population density
8 of 1,000 people per square mile or more.
- 9 c. Notice and comment on candidacy. – The Commission shall
10 notify each public entity identified as a candidate for
11 designation as a regulated entity. After notification of each
12 public entity, the Commission shall publish a list of all public
13 entities within a river basin that have been identified as
14 candidates for designation. The Commission shall accept public
15 comment on the proposed designation of a public entity as a
16 regulated entity for a period of not less than 30 days.
- 17 d. Designation of regulated entities. – After review of the public
18 comment, the Commission shall make a determination on
19 designation for each of the candidate public entities. The
20 Commission shall designate a candidate public entity that owns
21 or operates a municipal separate storm sewer system (MS4) as a
22 regulated public entity only if the Commission determines
23 either that:
- 24 1. The public entity has an actual population growth rate
25 that exceeds 1.3 times the State population growth rate
26 for the previous 10 years.
- 27 2. The public entity has a projected population growth rate
28 that exceeds 1.3 times the projected State population
29 growth rate for the next 10 years.
- 30 3. The public entity has an actual population increase that
31 exceeds fifteen percent (15%) of its previous population
32 for the previous two years.
- 33 4. The municipal separate storm sewer system (MS4)
34 discharges stormwater that adversely impacts water
35 quality.
- 36 5. The municipal separate storm sewer system (MS4) either
37 discharges stormwater that results in a significant
38 contribution of pollutants to sensitive receiving waters,
39 taking into account the effectiveness of other applicable
40 water quality protection programs. To determine the
41 effectiveness of other applicable water quality protection
42 programs, the Commission shall consider the water
43 quality of the receiving waters and whether the waters
44 support the uses set out in subsections (c), (d), and (e) of

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

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

- 39 (1) Connected discharge petition. – An owner or operator of a permitted
 40 municipal separate storm sewer system (MS4) may submit a petition to
 41 the Commission to request that a person who discharges into the
 42 permitted municipal separate storm sewer system (MS4) be required to
 43 obtain a separate Phase II National Pollutant Discharge Elimination
 44 System (NPDES) permit for stormwater management. The

1 Commission shall grant the petition and require the person to obtain a
2 separate Phase II National Pollutant Discharge Elimination System
3 (NPDES) permit for stormwater management if the petitioner shows
4 that the person's discharge flows or will flow into the permitted
5 municipal separate storm sewer system (MS4).

6 (2) Adverse impact petition. – Any person may submit a petition to the
7 Commission to request that an owner or operator of a municipal
8 separate storm sewer system (MS4) or a person who discharges
9 stormwater be required to obtain a Phase II National Pollutant
10 Discharge Elimination System (NPDES) permit for stormwater
11 management.

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

- 18 1. The municipal separate storm sewer system (MS4) or the
19 discharge discharges or has the potential to discharge
20 stormwater to sensitive receiving waters in an area with:
21 (i) an actual population growth rate that exceeds 1.3
22 times the State population growth rate for the previous
23 10 years; (ii) a projected population growth rate that
24 exceeds 1.3 times the projected State population growth
25 rate for the next 10 years; or (iii) an actual population
26 increase that exceeds fifteen percent (15%) of its
27 previous population for the previous two years.
- 28 2. The municipal separate storm sewer system (MS4) or the
29 discharge provides a significant contribution of
30 pollutants to sensitive receiving waters.
- 31 3. The municipal separate storm sewer system (MS4) or the
32 discharge is specifically listed by name as a source of
33 pollutants for urban stormwater in a total maximum daily
34 load (TMDL) implementation plan developed in
35 accordance with subsections (d) and (e) of 33 U.S.C. §
36 1313.

37 b. Types of evidence for required showing. – Petitioners may
38 make the required showing by providing to the Commission the
39 following information:

- 40 1. Monitoring data that includes, at a minimum,
41 representative sampling of the municipal separate storm
42 sewer system (MS4) or discharge and information
43 describing how the sampling is representative. The
44 petitioner must notify the owner or operator of the

- 1 municipal separate storm sewer system (MS4) or the
2 person who discharges stormwater of its intent to
3 conduct monitoring activities prior to conducting those
4 activities.
- 5 2. Scientific or technical literature that supports the
6 sampling methods.
- 7 3. Study and technical information on land uses in the
8 drainage area and the characteristics of stormwater
9 runoff from these land uses.
- 10 4. A map that delineates the drainage area of the petitioned
11 entity; the location of sampling stations; the location of
12 the stormwater outfalls in the adjacent area of the
13 sampling locations; general features, including, but not
14 limited to, surface waters, major roads, and political
15 boundaries; and areas of concern regarding water
16 quality.
- 17 5. For stormwater discharges to impaired waters,
18 documentation that the receiving waters are impaired or
19 degraded and monitoring data that demonstrates that the
20 municipal separate storm sewer system (MS4) or
21 discharge contributes pollutants for which the waters are
22 impaired or degraded.
- 23 6. For stormwater discharges to nonimpaired waters,
24 monitoring data that demonstrates that the owner or
25 operator of the municipal separate storm sewer system
26 (MS4) or the person who discharges stormwater is a
27 significant contributor of pollutants to the receiving
28 waters.
- 29 c. Water quality protection program offset. – If the petitioner
30 makes the required showing, the Commission shall review the
31 effectiveness of any existing water quality protection programs
32 that may offset the need to obtain a Phase II National Pollutant
33 Discharge Elimination System (NPDES) permit for stormwater
34 management. To determine the effectiveness of other applicable
35 water quality protection programs, the Commission shall
36 consider the water quality of the receiving waters and whether
37 the waters support the uses set out in subsections (c), (d), and
38 (e) of 15A NCAC 2B .0101 (Procedures for Assignment of
39 Water Quality Standards – General Procedures) and the specific
40 classification of the waters set out in 15A NCAC 2B .0300, et
41 seq. (Assignment of Stream Classifications). The Commission
42 may deny the petition if it finds that existing water quality
43 protection programs are adequate to address stormwater impacts

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

- 1 1. If the Commission determines that the owner or operator
2 of the municipal separate storm sewer system (MS4) or
3 the person who discharges stormwater is required to
4 obtain a Phase II National Pollutant Discharge
5 Elimination System (NPDES) permit for stormwater
6 management, any petitions for that municipal separate
7 storm sewer system (MS4) or discharge that were held
8 shall be considered in the development of the Phase II
9 National Pollutant Discharge Elimination System
10 (NPDES) permit for stormwater management.
- 11 2. If the Commission determines that the owner or operator
12 of the municipal separate storm sewer system (MS4) or
13 the person who discharges stormwater is not required to
14 obtain a Phase II National Pollutant Discharge
15 Elimination System (NPDES) permit for stormwater
16 management, an additional petition for the municipal
17 separate storm sewer system (MS4) or discharge must
18 present new information or demonstrate that conditions
19 have changed in order to be considered. If new
20 information is not provided, the petition shall be returned
21 as substantially incomplete.

- 22 h. The Commission shall evaluate a petition within 180 days of
23 the date on which it is determined to be complete. If the
24 Commission determines that the owner or operator of the
25 municipal separate storm sewer system (MS4) or the person
26 who discharges stormwater is required to obtain a Phase II
27 National Pollutant Discharge Elimination System (NPDES)
28 permit for stormwater management, the Commission shall
29 notify the owner or operator of the municipal separate storm
30 sewer system (MS4) or the person who discharges stormwater
31 within 30 days of the requirement to obtain the permit. The
32 owner or operator of the municipal separate storm sewer system
33 (MS4) or the person who discharges stormwater must submit its
34 application for a Phase II National Pollutant Discharge
35 Elimination System (NPDES) permit for stormwater
36 management within 18 months of the date of notification. If the
37 owner or operator of a municipal separate storm sewer system
38 is a municipality with a population of less than 5,000, the
39 municipality must submit an application for a Phase II National
40 Pollutant Discharge Elimination System (NPDES) permit for
41 stormwater management within 24 months of the date of
42 notification.

43 **SECTION 9.** Model Ordinance. – Pursuant to G.S. 143-214.7(c), the
44 Environmental Management Commission shall develop a model ordinance in

1 cooperation with local governments and other interested parties that shall allow the use
2 of both structural and nonstructural best management practices adequate to meet the
3 standards. The model ordinance shall be completed by 1 July 2005. In the development
4 of the model ordinance, the Commission shall provide for options that take into
5 consideration differences among local governments in the State, including, but not
6 limited to, population, financial resources, and human resources.

7 **SECTION 10.** Design Manual. – Consistent with G.S. 150B-2(8a)h., the
8 Division, in consultation with the Division of Land Resources of the Department, the
9 Division of Soil and Water Conservation of the Department, and North Carolina State
10 University, shall develop or revise a design manual to provide assistance in determining
11 which controls are best suited to the unique characteristics of the permittee, including,
12 but not limited to, hydrology, topography, climate, soils, and receiving waters. The
13 development or revision of the design manual shall be completed by 1 July 2005.

14 **SECTION 11.** Federal and State Development or Redevelopment Projects. –
15 A federal or State agency may apply to the Commission for a Phase I or Phase II
16 National Pollutant Discharge Elimination System (NPDES) permit for stormwater
17 management that applies to all of the activities of the agency or that applies to a
18 particular development or redevelopment project. The Commission shall have
19 exclusive jurisdiction to establish stormwater management requirements with respect to
20 a particular project that is not under the jurisdiction of a federal or State agency that
21 holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES)
22 permit for stormwater management that applies to all of the activities of the agency or
23 that applies to the particular development or redevelopment project. If a federal or State
24 agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination
25 System (NPDES) permit for stormwater management that applies to the particular
26 development or redevelopment project, then the project is subject to the stormwater
27 management requirements of this act as implemented by the Commission or by a local
28 government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the
29 implementation of this act.

30 **SECTION 12.** Definitions. – The following definitions apply to this act and
31 its implementation:

- 32 (1) The definitions set out in 40 Code of Federal Regulations § 122.2
33 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003
34 Edition).
- 35 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 36 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of
37 Terms).
- 38 (4) "1-year, 24-hour storm" means the surface runoff resulting from a
39 24-hour rainfall of an intensity expected to be equaled or exceeded, on
40 average, once in 12 months and with a duration of 24 hours.
- 41 (5) "Built-upon area" means that portion of a development project that is
42 covered by impervious or partially impervious surface including, but
43 not limited to, buildings; pavement and gravel areas such as roads,
44 parking lots, and paths; and recreation facilities such as tennis courts.

1 "Built-upon area" does not include a wooden slatted deck, the water
2 area of a swimming pool, or pervious or partially pervious paving
3 material to the extent that the paving material absorbs water or allows
4 water to infiltrate through the paving material.

5 (6) "Division" means the Division of Water Quality in the Department.

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

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

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

18 (10) "Regulated coverage area" means an unincorporated area of a county
19 to which the Stormwater Management Rule applies.

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

24 (12) "Sensitive receiving waters" means any of the following:

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

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

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

41 (13) "Significant contributor of pollutants" means a municipal separate
42 storm sewer system (MS4) or a discharge that contributes to the
43 pollutant loading of a water body or that destabilizes the physical
44 structure of a water body such that the contribution to pollutant loading

1 or the destabilization may reasonably be expected to adversely affect
2 the quality and uses of the water body. Uses of a water body shall be
3 determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B
4 .0222 (Classifications and Water Quality Standards Applicable to
5 Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B
6 .0300, et seq. (Assignment of Stream Classifications).

7 (14) "Stormwater Management Rule" means Section 10 of the temporary
8 rule adopted by the Environmental Management Commission on 10
9 October 2002, except that:

10 a. In subsection (a), the words "pursuant to Sub-Item (7)(a)(v) of
11 this Rule." are deleted and replaced by the words "set out in 40
12 Code of Federal Regulations § 122.34(b)(5) (1 July 2003
13 Edition).".

14 b. Subsections (c) and (d) are deleted.

15 c. The first sentence of subsection (e) is deleted and replaced with:
16 "The following model practices for a postconstruction
17 stormwater management program may be used in regulated
18 coverage areas:".

19 d. In subdivision (i) of subsection (e), the words "Sub-Item
20 (10)(B)" are deleted and replaced by the words "Sub-Item
21 (10)(e)(i)(B)".

22 e. In subdivision (i) of subsection (h), the words "while still
23 meeting the requirements of Sub-Item (10)(d) of this Rule" are
24 deleted.

25 f. In subsection (i), the words "temperature, while still meeting
26 the requirements of Sub-Item (10)(d) of this Rule." are deleted
27 and replaced by the word "temperature.".

28 g. In subdivision (i) of subsection (j), the words "while still
29 meeting the requirements of Sub-Item (10)(d) of this Rule" are
30 deleted.

31 h. In subsection (k), the words "of Item (10)" are deleted.

32 i. A new subsection (n) is added to read:

33 "(n) A regulated entity may develop its own
34 comprehensive watershed plan, may use the model ordinance
35 developed by the Commission, may design its own
36 postconstruction practices based on the Department's guidance
37 and engineering standards for best management practices
38 (BMPs), or it may incorporate the postconstruction model
39 practices set out in this rule to fulfill the minimum requirements
40 set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July
41 2003 Edition).".

42 (15) "Total maximum daily load (TMDL) implementation plan" means a
43 written, quantitative plan and analysis for attaining and maintaining

1 water quality standards in all seasons for a specific water body and
2 pollutant.

3 **SECTION 13.** Construction of Act. –

- 4 (1) Nothing in this act shall be construed to limit, expand, or otherwise
5 alter the authority of the Environmental Management Commission or
6 any unit of local government to adopt stormwater management
7 requirements that exceed the requirements of this act.
8 (2) This act shall not be construed to affect pending litigation.
9 (3) Except as specifically provided in this act, this act shall not be
10 construed to give effect to any temporary or permanent rule related to
11 Phase II stormwater management that has not become effective as
12 provided in G.S. 150B-21.3.
13 (4) The exclusions from the requirement to obtain a Phase II National
14 Pollutant Discharge Elimination System (NPDES) permit set out in 40
15 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including
16 the exclusions for certain nonpoint source agricultural and silvicultural
17 activities, apply to the provisions of this act.
18 (5) This act shall not be construed to affect any vested right to
19 development under any provision of statutory or common law. To the
20 extent that postconstruction measures are implemented by a zoning
21 ordinance, vested rights shall be determined as provided in
22 G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of
23 statutory and common law. To the extent that postconstruction
24 measures are implemented by means other than a zoning ordinance,
25 vested rights shall be determined as provided by applicable statutory
26 and common law. The Commission, the Department, local
27 governments, and other public entities shall implement this act in
28 compliance with the applicable vested rights provisions of statutory
29 and common law.
30 (6) This act shall not be construed to affect any delegation of any power or
31 duty by the Commission to the Department or subunit of the
32 Department.

33 **SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall
34 not codify any of the provisions of this act. The Revisor of Statutes shall set out the text
35 of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes
36 concerning this act to other sections of the General Statutes as the Revisor of Statutes
37 deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater
38 Management Rule, as defined in Section 11 of this act, and the text of Section 6 of the
39 temporary rule adopted by the Environmental Management Commission on 10 October
40 2002 as notes to G.S. 143-214.7.

41 **SECTION 15.** This act is effective when it becomes law and expires
42 1 October 2011.