

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

**S**

**3**

**SENATE BILL 1210\***  
**Agriculture/Environment/Natural Resources Committee Substitute Adopted**  
**6/29/04**  
**Third Edition Engrossed 6/30/04**

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

1 OBTAIN A PHASE II STORMWATER PERMIT; (10) FOR THE  
2 DEVELOPMENT OF A STORMWATER MODEL ORDINANCE AND  
3 STORMWATER DESIGN MANUAL; (11) FOR THE ROLES OF STATE AND  
4 LOCAL GOVERNMENTS IN REGULATING THE STORMWATER IMPACTS  
5 OF FEDERAL AND STATE PROJECTS; (12) DEFINITIONS OF TERMS TO BE  
6 USED IN THE IMPLEMENTATION OF THIS ACT; (13) THAT CERTAIN  
7 AGRICULTURE AND FORESTRY ACTIVITIES ARE EXEMPT FROM PHASE  
8 II STORMWATER PERMIT REQUIREMENTS; AND (14) HOW THE ACT  
9 SHALL BE CONSTRUED, AS RECOMMENDED BY THE ENVIRONMENTAL  
10 REVIEW COMMISSION.

11 The General Assembly of North Carolina enacts:

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

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

- 34 (1) New development or redevelopment located in the unincorporated area  
35 of a county shall comply with the standards set forth in the Stormwater  
36 Management Rule beginning 1 July 2006 if the new development or  
37 redevelopment is located in:
- 38 a. An area that is designated as an urbanized area under the 1990  
39 or 2000 census by the Bureau of the Census.
  - 40 b. The unincorporated area of a county outside of a municipality  
41 designated as an urbanized area under the 1990 or 2000 census  
42 by the Bureau of the Census that:

- 1 1. Extends one mile beyond the corporate limits of a
- 2 municipality with a population of less than 10,000
- 3 individuals.
- 4 2. Extends two miles beyond the corporate limits of a
- 5 municipality with a population of 10,000 or more
- 6 individuals but less than 25,000 individuals.
- 7 3. Extends three miles beyond the corporate limits of a
- 8 municipality with a population of 25,000 or more
- 9 individuals.
- 10 c. An area delineated pursuant to subdivision (2) of this section.
- 11 d. A county in which the unduplicated sum of: (i) the area that is
- 12 designated as an urbanized area under the 1990 or 2000 census
- 13 by the Bureau of the Census; (ii) the area described in sub-
- 14 subdivision b. of this subdivision; (iii) the area delineated
- 15 pursuant to subdivision 2 of this section; (iv) the jurisdiction of
- 16 a regulated entity designated pursuant to Section 7 of this act;
- 17 and (v) the area that is regulated by a Phase II National
- 18 Pollutant Discharge Elimination System (NPDES) permit for
- 19 stormwater management required pursuant to Section 8 of this
- 20 act equals or exceeds eighty-five percent (85%) of the total
- 21 geographic area of the county.
- 22 (2) Delineation process. – The Commission shall delineate regulated
- 23 coverage areas as provided in this subdivision.
- 24 a. Schedule. – The Commission shall implement the delineation
- 25 process in accordance with the schedule for review and revision
- 26 of basinwide water quality management plans as provided in
- 27 G.S. 143-215.8B(c).
- 28 b. Potential candidate coverage areas. – A potential candidate
- 29 coverage area is the unincorporated area of a county that is
- 30 outside a municipality designated as a regulated entity pursuant
- 31 to subdivisions (2) and (3) of Section 7 of this act that:
- 32 1. Extends one mile beyond the corporate limits of a
- 33 municipality with a population of less than 10,000
- 34 individuals.
- 35 2. Extends two miles beyond the corporate limits of a
- 36 municipality with a population of 10,000 or more
- 37 individuals but less than 25,000 individuals.
- 38 3. Extends three miles beyond the corporate limits of a
- 39 municipality with a population of 25,000 or more
- 40 individuals.
- 41 c. Identification of candidate coverage areas. – The Commission
- 42 shall identify an area within a potential candidate coverage area
- 43 described in sub-subdivision b. of this subdivision as a
- 44 candidate coverage area if the discharge of stormwater within or

- 1 from the unincorporated area has the potential to adversely  
2 impact water quality. An adverse impact on water quality  
3 includes any activity that violates water quality standards,  
4 including, but not limited to, any activity that impairs  
5 designated uses or that has a significant biological or habitat  
6 impact.
- 7 d. Notice and comment on candidacy. – The Commission shall  
8 notify each public entity that is located in whole or in part in a  
9 candidate coverage area. After notification of each public  
10 entity, the Commission shall publish a map of the  
11 unincorporated areas within the river basin that have been  
12 identified as candidates for delineation as regulated coverage  
13 areas. The Commission shall accept public comment on the  
14 proposed delineation of a candidate coverage area as a regulated  
15 coverage area for a period of not less than 30 days.
- 16 e. Delineation of regulated coverage areas. – After review of  
17 public comment, the Commission shall delineate regulated  
18 coverage areas. The Commission shall delineate a candidate  
19 coverage area as a regulated coverage area only if the  
20 Commission determines that the discharge of stormwater within  
21 or from the candidate coverage area either:
- 22 1. Adversely impacts water quality.
  - 23 2. Results in a significant contribution of pollutants to  
24 sensitive receiving waters, taking into account the  
25 effectiveness of other applicable water quality protection  
26 programs. To determine the effectiveness of other  
27 applicable water quality protection programs, the  
28 Commission shall consider the water quality of the  
29 receiving waters and whether the waters support the uses  
30 set out in subsections (c), (d), and (e) of 15A NCAC 2B  
31 .0101 (Procedures for Assignment of Water Quality  
32 Standards – General Procedures) and the specific  
33 classification of the waters set out in 15A NCAC 2B  
34 .0300, et seq. (Assignment of Stream Classifications).
- 35 f. Notice of delineation. – The Commission shall provide written  
36 notice to each public entity that is located in whole or in part in  
37 a candidate coverage area of its delineation determination. The  
38 notice shall state the basis for the determination.
- 39 (3) Except as provided in this subdivision and Section 5 of this act, the  
40 Commission shall administer and enforce the standards for new  
41 development and redevelopment in the regulated coverage areas. To  
42 the extent that the new development or redevelopment is located in a  
43 municipal planning jurisdiction, the municipality shall administer and  
44 enforce the standards. A public entity may request that the

1 Commission delegate administration and enforcement of the  
2 stormwater management program to the public entity as provided in  
3 Section 5 of this act.

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

13 **SECTION 4.** General Permit. – The Commission shall develop and issue a  
14 Phase II National Pollutant Discharge Elimination System (NPDES) general permit for  
15 stormwater management. The general permit requirements for postconstruction  
16 stormwater management measures required by 40 Code of Federal Regulations §  
17 122.34(b)(5) (1 July 2003 Edition) shall require a permittee to meet the standards set out  
18 in the Stormwater Management Rule but shall not impose any requirement on the  
19 permittee that exceeds the standards set out in the Stormwater Management Rule. After  
20 the Commission has issued a Phase II National Pollutant Discharge Elimination System  
21 (NPDES) general permit for stormwater management, a public entity that has applied  
22 for a permit under Section 1 of this act may submit a notice of intent to be covered  
23 under the general permit to the Commission. The Commission shall treat an application  
24 for a permit under Section 1 of this act as an application for an individual permit unless  
25 the applicant submits a notice of intent to be covered under a general permit under this  
26 section.

27 **SECTION 5.** Delegation. – A public entity that does not administer a Phase  
28 II National Pollutant Discharge Elimination System (NPDES) permit for stormwater  
29 management throughout the entirety of its planning jurisdiction and whose planning  
30 jurisdiction includes a regulated coverage area under Section 2 of this act may submit a  
31 stormwater management program for its regulated coverage area or a portion of its  
32 regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c).  
33 An ordinance or regulation adopted by a public entity shall at least meet and may  
34 exceed the minimum requirements of this act and the six minimum control measures  
35 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). Two or  
36 more public entities are authorized to establish a joint program and to enter into any  
37 agreements that are necessary for the proper administration and enforcement of the  
38 program. The resolution, memorandum of agreement, or other document that establishes  
39 any joint program must be duly recorded in the minutes of the governing body of each  
40 public entity participating in the program, and a certified copy of each resolution must  
41 be filed with the Commission. The Commission shall review each proposed program  
42 submitted to it to determine whether the submission is complete. Within 90 days after  
43 the receipt of a complete submission, the Commission shall notify the public entity  
44 submitting the program that it has been approved, approved with modifications, or

1 disapproved. The Commission shall only approve a program upon determining that its  
2 standards equal or exceed those of this act and the six minimum control measures  
3 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the  
4 Commission determines that any public entity is failing to administer or enforce an  
5 approved stormwater management program, it shall notify the public entity in writing  
6 and shall specify the deficiencies of administration and enforcement. If the public entity  
7 has not taken corrective action within 30 days of receipt of notification from the  
8 Commission, the Commission shall assume administration and enforcement of the  
9 program until such time as the public entity indicates its willingness and ability to  
10 resume administration and enforcement of the program.

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

- 12 (1) For an application for a Phase II National Pollutant Discharge  
13 Elimination System (NPDES) permit for stormwater management  
14 submitted by an owner or operator of a small municipal separate storm  
15 sewer system (MS4) located in whole or in part within an urbanized  
16 area as designated by the 1990 census by the Bureau of the Census, the  
17 Commission shall send a draft permit decision to public notice by 1  
18 November 2004.
- 19 (2) For an application for a Phase II National Pollutant Discharge  
20 Elimination System (NPDES) permit for stormwater management  
21 submitted by an owner or operator of a small municipal separate storm  
22 sewer system (MS4) located in whole or in part within an urbanized  
23 area as designated by the 2000 census by the Bureau of the Census, the  
24 Commission shall send a draft permit decision to public notice by 1  
25 May 2005.
- 26 (3) A public entity designated as a regulated entity pursuant to 40 Code of  
27 Federal Regulations § 122.32 (1 July 2003 Edition) shall develop and  
28 implement postconstruction stormwater management measures within  
29 24 months of the date on which its Phase II National Pollutant  
30 Discharge Elimination System (NPDES) permit for stormwater  
31 management is issued.
- 32 (4) A public entity designated as a regulated entity pursuant to  
33 subdivisions (2) and (3) of Section 7 of this act shall develop and  
34 implement postconstruction stormwater management measures within  
35 36 months of the date on which its Phase II National Pollutant  
36 Discharge Elimination System (NPDES) permit for stormwater  
37 management is issued.

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

- 43 (1) Federal designation. – A public entity that owns or operates a  
44 municipal separate storm sewer system (MS4) may be designated as a

1 regulated entity pursuant to 40 Code of Federal Regulations § 122.32  
2 (1 July 2003 Edition).

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

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

10 b. Identification of candidate regulated entities. – The  
11 Commission shall identify a public entity as a candidate for  
12 designation as a regulated entity if the municipal separate storm  
13 sewer system (MS4) either:

14 1. Discharges stormwater that has the potential to adversely  
15 impact water quality. An adverse impact on water quality  
16 includes any activity that violates water quality  
17 standards, including, but not limited to, any activity that  
18 impairs designated uses or that has a significant  
19 biological or habitat impact.

20 2. Serves a public entity that has not been designated  
21 pursuant to subdivision (1) of this section and that has a  
22 population of more than 10,000 and a population density  
23 of 1,000 people per square mile or more.

24 c. Notice and comment on candidacy. – The Commission shall  
25 notify each public entity identified as a candidate for  
26 designation as a regulated entity. After notification of each  
27 public entity, the Commission shall publish a list of all public  
28 entities within a river basin that have been identified as  
29 candidates for designation. The Commission shall accept public  
30 comment on the proposed designation of a public entity as a  
31 regulated entity for a period of not less than 30 days.

32 d. Designation of regulated entities. – After review of the public  
33 comment, the Commission shall make a determination on  
34 designation for each of the candidate public entities. The  
35 Commission shall designate a candidate public entity that owns  
36 or operates a municipal separate storm sewer system (MS4) as a  
37 regulated public entity only if the Commission determines  
38 either that:

39 1. The public entity has an actual population growth rate  
40 that exceeds 1.3 times the State population growth rate  
41 for the previous 10 years.

42 2. The public entity has a projected population growth rate  
43 that exceeds 1.3 times the projected State population  
44 growth rate for the next 10 years.

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



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

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

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

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

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

33 1. The municipal separate storm sewer system (MS4) or the  
34 discharge discharges or has the potential to discharge  
35 stormwater to sensitive receiving waters in an area with:  
36 (i) an actual population growth rate that exceeds 1.3  
37 times the State population growth rate for the previous  
38 10 years; (ii) a projected population growth rate that  
39 exceeds 1.3 times the projected State population growth  
40 rate for the next 10 years; or (iii) an actual population  
41 increase that exceeds fifteen percent (15%) of its  
42 previous population for the previous two years.

- 1
  - 2
  - 3
  - 4
  - 5
  - 6
  - 7
  - 8
  - 9
  - 10
  - 11
  - 12
  - 13
  - 14
  - 15
  - 16
  - 17
  - 18
  - 19
  - 20
  - 21
  - 22
  - 23
  - 24
  - 25
  - 26
  - 27
  - 28
  - 29
  - 30
  - 31
  - 32
  - 33
  - 34
  - 35
  - 36
  - 37
  - 38
  - 39
  - 40
  - 41
  - 42
  - 43
2. The municipal separate storm sewer system (MS4) or the discharge provides a significant contribution of pollutants to sensitive receiving waters.
  3. The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.
- b. Types of evidence for required showing. – Petitioners may make the required showing by providing to the Commission the following information:
1. Monitoring data that includes, at a minimum, representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner must notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities.
  2. Scientific or technical literature that supports the sampling methods.
  3. Study and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
  4. A map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, including, but not limited to, surface waters, major roads, and political boundaries; and areas of concern regarding water quality.
  5. For stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded.
  6. For stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a

- 1 significant contributor of pollutants to the receiving  
2 waters.
- 3 c. Water quality protection program offset. – If the petitioner  
4 makes the required showing, the Commission shall review the  
5 effectiveness of any existing water quality protection programs  
6 that may offset the need to obtain a Phase II National Pollutant  
7 Discharge Elimination System (NPDES) permit for stormwater  
8 management. To determine the effectiveness of other applicable  
9 water quality protection programs, the Commission shall  
10 consider the water quality of the receiving waters and whether  
11 the waters support the uses set out in subsections (c), (d), and  
12 (e) of 15A NCAC 2B .0101 (Procedures for Assignment of  
13 Water Quality Standards – General Procedures) and the specific  
14 classification of the waters set out in 15A NCAC 2B .0300, et  
15 seq. (Assignment of Stream Classifications). The Commission  
16 may deny the petition if it finds that existing water quality  
17 protection programs are adequate to address stormwater impacts  
18 on sensitive receiving waters and to insure compliance with a  
19 TMDL implementation plan.
- 20 (3) Petition administration. – The Commission shall process petitions in  
21 the following manner:
- 22 a. The Commission shall only accept petitions submitted on  
23 Department forms.
- 24 b. A separate petition must be filed for each municipal separate  
25 storm sewer system (MS4) or discharge.
- 26 c. The Commission shall evaluate only complete petitions. The  
27 Commission shall make a determination on the completeness of  
28 a petition within 90 days of receipt of the petition, or it shall be  
29 deemed complete. If the Commission requests additional  
30 information, the petitioner may submit additional information;  
31 and the Commission will determine, within 90 days of receipt  
32 of the additional information, whether the information  
33 completes the petition.
- 34 d. The petitioner shall provide a copy of the petition and a copy of  
35 any subsequent additional information submitted to the  
36 Commission to the chief administrative officer of the municipal  
37 separate storm sewer system (MS4) or the person in control of  
38 the discharge within 48 hours of each submittal.
- 39 e. The Commission shall post all petitions on the Division Web  
40 site and maintain copies available for inspection at the  
41 Division's office. The Commission shall accept and consider  
42 public comment for at least 30 days from the date of posting.
- 43 f. The Commission may hold a public hearing on a petition and  
44 shall hold a public hearing on a petition if it receives a written

1 request for a public hearing within the public comment period,  
2 and the Commission determines that there is a significant public  
3 interest in holding a public hearing. The Commission's  
4 determination to hold a public hearing shall be made no less  
5 than 15 days after the close of the public comment period. The  
6 Commission shall schedule the hearing to be held within 45  
7 days of the close of the initial public comment period and shall  
8 accept and consider additional public comment through the date  
9 of the hearing.

10 g. An additional petition for the same municipal separate storm  
11 sewer system (MS4) or discharge received during the public  
12 comment period shall be considered as comment on the original  
13 petition. An additional petition for the same municipal separate  
14 storm sewer system (MS4) or discharge received after the  
15 public comment period ends and before the final determination  
16 is made shall be considered incomplete and held pending a final  
17 determination on the original petition.

18 1. If the Commission determines that the owner or operator  
19 of the municipal separate storm sewer system (MS4) or  
20 the person who discharges stormwater is required to  
21 obtain a Phase II National Pollutant Discharge  
22 Elimination System (NPDES) permit for stormwater  
23 management, any petitions for that municipal separate  
24 storm sewer system (MS4) or discharge that were held  
25 shall be considered in the development of the Phase II  
26 National Pollutant Discharge Elimination System  
27 (NPDES) permit for stormwater management.

28 2. If the Commission determines that the owner or operator  
29 of the municipal separate storm sewer system (MS4) or  
30 the person who discharges stormwater is not required to  
31 obtain a Phase II National Pollutant Discharge  
32 Elimination System (NPDES) permit for stormwater  
33 management, an additional petition for the municipal  
34 separate storm sewer system (MS4) or discharge must  
35 present new information or demonstrate that conditions  
36 have changed in order to be considered. If new  
37 information is not provided, the petition shall be returned  
38 as substantially incomplete.

39 h. The Commission shall evaluate a petition within 180 days of  
40 the date on which it is determined to be complete. If the  
41 Commission determines that the owner or operator of the  
42 municipal separate storm sewer system (MS4) or the person  
43 who discharges stormwater is required to obtain a Phase II  
44 National Pollutant Discharge Elimination System (NPDES)

1 permit for stormwater management, the Commission shall  
2 notify the owner or operator of the municipal separate storm  
3 sewer system (MS4) or the person who discharges stormwater  
4 within 30 days of the requirement to obtain the permit. The  
5 owner or operator of the municipal separate storm sewer system  
6 (MS4) or the person who discharges stormwater must submit its  
7 application for a Phase II National Pollutant Discharge  
8 Elimination System (NPDES) permit for stormwater  
9 management within 18 months of the date of notification. If the  
10 owner or operator of a municipal separate storm sewer system  
11 is a municipality with a population of less than 5,000, the  
12 municipality must submit an application for a Phase II National  
13 Pollutant Discharge Elimination System (NPDES) permit for  
14 stormwater management within 24 months of the date of  
15 notification.

16 **SECTION 9.** Model Ordinance. – Pursuant to G.S. 143-214.7(c), the  
17 Environmental Management Commission shall develop a model ordinance in  
18 cooperation with local governments and other interested parties that shall allow the use  
19 of both structural and nonstructural best management practices adequate to meet the  
20 standards. The model ordinance shall be completed by 1 July 2005. In the development  
21 of the model ordinance, the Commission shall provide for options that take into  
22 consideration differences among local governments in the State, including, but not  
23 limited to, population, financial resources, and human resources.

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

31 **SECTION 11.** Federal and State Development or Redevelopment Projects. –  
32 A federal or State agency may apply to the Commission for a Phase I or Phase II  
33 National Pollutant Discharge Elimination System (NPDES) permit for stormwater  
34 management that applies to all of the activities of the agency or that applies to a  
35 particular development or redevelopment project. The Commission shall have  
36 exclusive jurisdiction to establish stormwater management requirements with respect to  
37 a particular project that is not under the jurisdiction of a federal or State agency that  
38 holds a Phase I or Phase II National Pollutant Discharge Elimination System (NPDES)  
39 permit for stormwater management that applies to all of the activities of the agency or  
40 that applies to the particular development or redevelopment project. If a federal or State  
41 agency does not hold a Phase I or Phase II National Pollutant Discharge Elimination  
42 System (NPDES) permit for stormwater management that applies to the particular  
43 development or redevelopment project, then the project is subject to the stormwater  
44 management requirements of this act as implemented by the Commission or by a local

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

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

- 5 (1) The definitions set out in 40 Code of Federal Regulations § 122.2  
6 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003  
7 Edition).
- 8 (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- 9 (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of  
10 Terms).
- 11 (4) "1-year, 24-hour storm" means the surface runoff resulting from a  
12 24-hour rainfall of an intensity expected to be equaled or exceeded, on  
13 average, once in 12 months and with a duration of 24 hours.
- 14 (5) "Built-upon area" means that portion of a development project that is  
15 covered by impervious or partially impervious surface including, but  
16 not limited to, buildings; pavement and gravel areas such as roads,  
17 parking lots, and paths; and recreation facilities such as tennis courts.  
18 "Built-upon area" does not include a wooden slatted deck, the water  
19 area of a swimming pool, or pervious or partially pervious paving  
20 material to the extent that the paving material absorbs water or allows  
21 water to infiltrate through the paving material.
- 22 (6) "Division" means the Division of Water Quality in the Department.
- 23 (7) "Planning jurisdiction" means the territorial jurisdiction within which a  
24 municipality exercises the powers authorized by Article 19 of Chapter  
25 160A of the General Statutes, or a county may exercise the powers  
26 authorized by Article 18 of Chapter 153A of the General Statutes.
- 27 (8) "Public entity" means the United States; the State; a city, village,  
28 township, county, school district, public college or university, or  
29 single-purpose governmental agency; or any other governing body that  
30 is created by federal or State law.
- 31 (9) "Redevelopment" means any rebuilding activity other than a  
32 rebuilding activity that results in no net increase in built-upon area and  
33 provides equal or greater stormwater control than the previous  
34 development.
- 35 (10) "Regulated coverage area" means an unincorporated area of a county  
36 to which the Stormwater Management Rule applies.
- 37 (11) "Regulated entity" means any public entity that must obtain a Phase II  
38 National Pollutant Discharge Elimination System (NPDES) permit for  
39 stormwater management for its municipal separate storm sewer system  
40 (MS4).
- 41 (12) "Sensitive receiving waters" means any of the following:
  - 42 a. Waters that are classified as high quality, outstanding resource,  
43 shellfish, trout, or nutrient-sensitive waters in accordance with

- 1 subsections (d) and (e) of 15A NCAC 2B .0101 (Procedures for  
2 Assignment of Water Quality Standards – General Procedures).
- 3 b. Waters that are occupied by or designated as critical habitat for  
4 aquatic animal species that are listed as threatened or  
5 endangered by the United States Fish and Wildlife Service or  
6 the National Marine Fisheries Service under the provisions of  
7 the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87  
8 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.
- 9 c. Waters for which the designated use, as described by the  
10 classification system set out in subsections (c), (d), and (e) of  
11 15A NCAC 2B .0101 (Procedures for Assignment of Water  
12 Quality Standards – General Procedures), have been determined  
13 to be impaired in accordance with the requirements of  
14 subsection (d) of 33 U.S.C. § 1313.
- 15 (13) "Significant contributor of pollutants" means a municipal separate  
16 storm sewer system (MS4) or a discharge that contributes to the  
17 pollutant loading of a water body or that destabilizes the physical  
18 structure of a water body such that the contribution to pollutant loading  
19 or the destabilization may reasonably be expected to adversely affect  
20 the quality and uses of the water body. Uses of a water body shall be  
21 determined pursuant to 15A NCAC 2B .0211 through 15A NCAC 2B  
22 .0222 (Classifications and Water Quality Standards Applicable to  
23 Surface Waters and Wetlands of North Carolina) and 15A NCAC 2B  
24 .0300, et seq. (Assignment of Stream Classifications).
- 25 (14) "Stormwater Management Rule" means Section 10 of the temporary  
26 rule adopted by the Environmental Management Commission on 10  
27 October 2002, except that:
- 28 a. In subsection (a), the words "pursuant to Sub-Item (7)(a)(v) of  
29 this Rule." are deleted and replaced by the words "set out in 40  
30 Code of Federal Regulations § 122.34(b)(5) (1 July 2003  
31 Edition)".
- 32 b. Subsections (c) and (d) are deleted.
- 33 c. In the first sentence of subsection (e), the words "meets the  
34 following requirements:" is deleted and replaced by the words  
35 "manages stormwater and protects water quality. The program  
36 shall equal or exceed the stormwater management and water  
37 quality protection provided by the following model practices:".
- 38 d. In subdivision (i) of subsection (e), the words "Sub-Item  
39 (10)(B)" are deleted and replaced by the words "Sub-Item  
40 (10)(b)".
- 41 e. In subdivision (i) of subsection (h), the words "while still  
42 meeting the requirements of Sub-Item (10)(d) of this Rule" are  
43 deleted.

- 1 f. In subsection (i), the words "temperature, while still meeting  
2 the requirements of Sub-Item (10)(d) of this Rule." are deleted  
3 and replaced by the word "temperature."  
4 g. In subdivision (i) of subsection (j), the words "while still  
5 meeting the requirements of Sub-Item (10)(d) of this Rule" are  
6 deleted.  
7 h. In subsection (k), the words "of Item (10)" are deleted.  
8 i. A new subsection (n) is added to read:  
9 "(n) A regulated entity may develop its own  
10 comprehensive watershed plan, may use the model ordinance  
11 developed by the Commission, may design its own  
12 postconstruction practices based on the Department's guidance  
13 and engineering standards for best management practices  
14 (BMPs), or it may incorporate the postconstruction model  
15 practices set out in this rule to fulfill the minimum requirements  
16 set out in 40 Code of Federal Regulations § 122.34(b)(5) (1 July  
17 2003 Edition)."

- 18 (15) "Total maximum daily load (TMDL) implementation plan" means a  
19 written, quantitative plan and analysis for attaining and maintaining  
20 water quality standards in all seasons for a specific water body and  
21 pollutant.

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

- 23 (1) Nothing in this act shall be construed to limit, expand, or otherwise  
24 alter the authority of the Environmental Management Commission or  
25 any unit of local government to adopt stormwater management  
26 requirements that exceed the requirements of this act.  
27 (2) This act shall not be construed to affect pending litigation.  
28 (3) Except as specifically provided in this act, this act shall not be  
29 construed to give effect to any temporary or permanent rule related to  
30 Phase II stormwater management that has not become effective as  
31 provided in G.S. 150B-21.3.  
32 (4) The exclusions from the requirement to obtain a Phase II National  
33 Pollutant Discharge Elimination System (NPDES) permit set out in 40  
34 Code of Federal Regulations § 122.3 (1 July 2003 Edition), including  
35 the exclusions for certain nonpoint source agricultural and silvicultural  
36 activities, apply to the provisions of this act.  
37 (5) This act shall not be construed to affect any vested right to  
38 development under any provision of statutory or common law. To the  
39 extent that postconstruction measures are implemented by a zoning  
40 ordinance, vested rights shall be determined as provided in  
41 G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of  
42 statutory and common law. To the extent that postconstruction  
43 measures are implemented by means other than a zoning ordinance,  
44 vested rights shall be determined as provided by applicable statutory



1                   and common law. The Commission, the Department, local  
2                   governments, and other public entities shall implement this act in  
3                   compliance with the applicable vested rights provisions of statutory  
4                   and common law.

5                   (6) This act shall not be construed to affect any delegation of any power or  
6                   duty by the Commission to the Department or subunit of the  
7                   Department.

8                   **SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall  
9                   not codify any of the provisions of this act. The Revisor of Statutes shall set out the text  
10                  of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes  
11                  concerning this act to other sections of the General Statutes as the Revisor of Statutes  
12                  deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater  
13                  Management Rule, as defined in Section 11 of this act, and the text of Section 6 of the  
14                  temporary rule adopted by the Environmental Management Commission on 10 October  
15                  2002 as notes to G.S. 143-214.7.

16                  **SECTION 15.** This act is effective when it becomes law and expires  
17                  1 October 2011.