

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater picks up pollutants as it drains to waters of the State. When a person alters stormwater drainage, the pollutants carried by stormwater to waters of the State may be concentrated or increased, contributing to "water pollution," as that term is defined in G.S. 143-211. The juncture at which stormwater reaches waters of the State will either be through the terminus of a pipe, ditch or other discrete outlet, or in a diffuse sheet flow manner.

(b) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 2H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances. For post-construction requirements, a program will be deemed compliant for the areas where it is implementing the Water Supply Watershed Protection Programs for WS-I – WS-IV waters, the HQW and freshwater ORW Waters Management Strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, the Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy, or the Randleman Lake Water Supply Watershed program.

(c) Regulated Entities (REs), subject to NPDES permitting, shall receive NPDES permits for stormwater discharges to surface waters, in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0156, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc. 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of sixty-nine dollars (\$69.00) each plus six dollars (\$6.00) shipping and handling. Copies are also available at the Division of Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. These federal regulations can also be accessed on the world wide web at <http://www.gpo.gov/nara/cfr/index.html>.

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

15A NCAC 02H .0150 DEFINITIONS

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

- (1) 1-year, 24-hour Storm means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (2) Built - Upon Area means that portion of a development project, after construction is completed, that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement, and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (3) Existing Development means those projects that are completed or those projects that are not yet completed, but, at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government ordinance, or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:
 - (a) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
 - (b) Outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or
 - (c) Approved site-specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (4) Growing Population Area means an area with High Population Growth or Growth Potential.
- (5) Growth Potential means a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years or sharing to any extent a geographic boundary with a High Population Growth area.

- (6) High Population Growth means either a 10-year rate of growth exceeding 1.3 times the state population growth rate for that same period or a two-year rate of growth which exceeds 15 percent of its previous population.
- (7) Population Density means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the Total Population as defined in this Rule.
- (8) Public Entity means the United States, State of North Carolina, city, village, township, county, school district, public college or university, single purpose governmental agency, or any other governing body which is created by federal or state law.
- (9) Redevelopment means any rebuilding activity other than a rebuilding activity that;
 - (a) Results in no net increase in built-upon area, and
 - (b) Provides equal or greater stormwater control than the previous development.
- (10) Regulated Entities means any public entity which must obtain a stormwater permit pursuant to the designation or petition process set out in 15A NCAC 02H .0151 or .0152.
- (11) Sensitive Receiving Waters means
 - (a) Waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 02B .0101(d) and (e);
 - (b) Waters which are occupied by, or designated as critical habitat for, federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544; or
 - (c) Waters for which the designated use, as set forth in the classification system at 15A NCAC 02B .0101(c), (d), and (e), have been determined to be impaired in accordance with the requirements of 33 U.S.C. 1313(d).
- (12) Significant Contributor of Pollutants means an MS4 or a discharge that,
 - (a) Contributes to a pollutant loading that may reasonably be expected to adversely affect the quality and uses of a water body; or
 - (b) Destabilizes the physical structure of a water body such that the discharge may reasonably be expected to adversely affect the quality and uses of that water body.

Uses of the waters shall be determined pursuant to 15A NCAC 02B .0211 - .0222 and 15A NCAC 02B .0300.
- (13) Total Maximum Daily Load (TMDL) means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.
- (14) Total Population means the sum of permanent and seasonal populations. The permanent population will be determined from the most recent data available from the Office of State Budget and Management, State Demographer or the federal Bureau of the Census and the seasonal population will be determined from the most recent data available from the federal Bureau of the Census.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0151 PUBLIC ENTITY DESIGNATIONS

- (a) Public Entity Designations shall be made through the federal designation process, the two-step State designation process, and the TMDL MS4 designation process. Once a public entity is designated, it shall become a regulated entity (RE) which must obtain a stormwater permit. REs shall comply with the permit application schedule set forth in Rule .0153.
- (b) The designation process shall be as follows:
 - (1) Federal Designation Process.
In accordance with 40 CFR 122.32, all Small MS4s are designated if they are located in whole or in part within an Urbanized Area as determined by the most recent decennial U.S. census. The Department, within three months of federal verification of decennial census data, shall notify in writing all the public entities identified.
 - (2) State Designation Process.

The Department shall designate additional dischargers or MS4's in a two-step process based on their potential to adversely affect water quality whether the effects constitute violations of water quality standards such as impairment of designated uses, or whether the effects constitute other types of significant water quality impacts such as adverse habitat and biological impacts. As a first step, the State shall identify public entities which are candidates for designation. As a second step, the State shall apply criteria to the identified public entities to determine whether their discharges or MS4's shall be designated.

- (A) Step One: The Department shall identify public entities as candidates for designation based on population and geographical nexus to an MS4.
 - (i) Municipalities. A municipality shall be identified as a candidate for designation if its total population is greater than 10,000 and its population density is at least 1,000 people per square mile.
 - (ii) Counties. A county shall be identified as a candidate for designation if the county municipal and non-municipal total population is greater than 45,000 persons.
 - (iii) Other public entities. A public entity shall be identified as a candidate for designation if it is a municipality located within a designated county or is an owner/operator of a MS4.
 - (B) Step Two: Designation of identified public entities. From the identified public entities, the Department shall designate those dischargers or MS4's that are more likely than not, based upon their design or construction, to contribute to a violation of a water quality standard by discharging stormwater to Sensitive Receiving Waters within a Growing Population Area or by providing a Significant Contribution of Pollutants, taking into account the effectiveness of the public entities' existing water quality protection programs. Effectiveness of existing water quality programs shall be determined based upon the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300.
- (3) TMDL MS4 designation.
 Total Maximum Daily Load (TMDL) MS4s. TMDL MS4s include public entities discharging pollutants that are contributing to the impairment of a water body's use, as determined in accordance with 33 U.S.C 1313 (d). TMDL MS4s shall be designated if the MS4 is specifically listed by name for urban stormwater Total Maximum Daily Load development.
- (4) State Designation Administration.
- (A) The Department shall implement the designation process in accordance with the Department schedule for Basinwide Plans.
 - (B) The Department shall publish a list of public entities identified as candidates for designation. Lists shall be developed for a river basin in accordance with North Carolina's Basinwide Planning Schedule. Publication of this list may be coordinated with public notices issued through basinwide planning efforts.
 - (C) The Department shall notify all public entities identified as candidates for designation prior to the publication of the candidate list.
 - (D) The Department shall accept public comment on the application of the designation criteria to the public entities identified as candidates for designation. A public comment period of not less than 30 days shall be provided.
 - (E) After review of the designation criteria and review of public comments received, the Department shall make a determination on designation for each of the candidates.
 - (F) The Department shall provide written notification to each public entity of its designation determination and the requirements for application set out in Rule 02H .0153.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
 Eff. (Pending Legislative Review).

15A NCAC 02H .0152 PETITIONS

(a) Types of Petitions. A petition may be submitted to the Department to require a NPDES stormwater permit for a discharge or a MS4 as follows:

- (1) Connected Discharge Petition: Any operator of a permitted MS4 may submit a petition to the Department to require a separate NPDES stormwater permit for any connecting discharge.
- (2) Adverse Impact Petition: Any person may submit a petition to the Department to require a NPDES stormwater permit for any discharge or MS4 that contributes to a violation of a water quality standard, is a Significant Contributor of Pollutants, or is a TMDL contributor of pollutants.

(b) Petition Evaluation. Petitions will be evaluated based on the following criteria. If the petition meets the criteria in this Rule, then the Department will require a NPDES stormwater permit.

- (1) A Connected Discharge Petition must show that the discharge flows or will flow into a permitted MS4.
- (2) An Adverse Impact Petition must show that the discharge or MS4 is a contributor to a violation of a water quality standard as described in Step Two of the State's Designation Process; a Significant Contributor of Pollutants; or a TMDL contributor of pollutants because the discharge or MS4 is specifically listed for urban stormwater TMDL development. Petitions may demonstrate that a discharge or MS4 is such a contributor by providing the Department the information outlined below:
 - (A) Monitoring data which includes, at a minimum, representative sampling of the stormwater discharge or MS4 subject to the petition and information describing how the sampling may be considered representative. However, the petitioner must notify the discharger or MS4 which is the subject of the petition prior to conducting monitoring activities.
 - (B) Technical scientific literature supporting any sampling methods.
 - (C) Technical study information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
 - (D) A map delineating 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 and general features such as, surface waters, major roads and political boundaries to appropriately locate the area of concern for the reviewers.
 - (E) For stormwater discharges to impaired waters: documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the discharge or MS4 contributes pollutants for which the waters are impaired or degraded.
 - (F) For stormwater discharges to non-impaired waters: monitoring data that demonstrates that the petitioned entity is a significant contributor of pollutants to the receiving waters.

(c) If the petition makes the required showing, the Department shall review the effectiveness of any existing water quality protection programs which may offset the need to obtain a NPDES stormwater permit. The Department shall consider the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300 when determining the effectiveness of existing programs.

(d) Petition Administration. The Department shall process petitions in the following manner:

- (1) The Department shall accept petitions submitted only on Department forms.
- (2) A separate petition must be filed for each discharge or MS4.
- (3) The Department shall evaluate only complete petitions. The Department shall make a determination on the completeness of the petition within 90 days of receipt of a petition application or it shall be deemed complete. If the Department requests additional information, then the petitioner may submit additional information and the Department will review, within 90 days of receipt of the additional information, whether the information completes the petition.
- (4) The Petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Department to the persons in control of the discharge or the chief administrative officer of the MS4 within 48 hours of each submittal.
- (5) If the Department determines that the information is insufficient to make its evaluation of the petition under Paragraph (b) of this Rule, then it may request additional information relevant to the criteria listed in Paragraph (b) of this Rule that is necessary to evaluate the petition.
- (6) The Department shall post all petitions on the Division web site and maintain copies available for inspection at the Division's office. The Department shall accept public comments for at least 30 days from the date of posting.
- (7) The Department may hold a public hearing on any petition as part of its case-by-case need for additional information. The Department shall hold a public hearing on the petition if it receives a

written request for a public hearing within the public comment period and the Department determines that there is a significant public interest in holding such hearing. The Department's determination to hold a hearing shall be no more than 15 days from the close of the public comment period. The Department shall set the hearing within 45 days of the close of the initial public comment period and shall accept additional public comment through the date of the hearing.

- (8) Information on the discharge or MS4 shall be accepted until the end of the public comment period and shall be considered in making the final determination on the petition.
- (9) New petitions for the same discharge or MS4 received during the public comment period shall be considered as comments on the original petition. New petitions for the same discharge or MS4 received after the public comment period ends and before the final determination is made shall be considered incomplete and placed on administrative hold pending a final determination on the original petition.
 - (A) If the Department determines that a discharger or MS4 must obtain a NPDES stormwater permit, any petitions for that discharge or MS4 that were placed on administrative hold shall be considered in the development of the NPDES stormwater permit.
 - (B) If the Department determines that a discharger or MS4 need not obtain a NPDES stormwater permit, new petitions for that discharge or MS4 must present new information relevant to the criteria listed in Paragraph (b) of this Rule that substantially changes the evaluation of the petition in order to be considered.
- (10) The Department shall evaluate petitions within 180 days of the date they are determined or deemed to be complete. If the Department's determination is that the discharger or MS4 shall be permitted, then the Department shall notify the discharger or MS4 within 30 days of the requirement to obtain a permit. The discharger or MS4 must submit its application for a NPDES stormwater permit within 18 months of the date of notification.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0153 APPLICATION SCHEDULE AND REQUIRED CONTENTS

- (a) Regulated Entities must submit applications on Department forms.
- (b) Regulated Entities must apply within 18 months of notification by the Department of automatic federal designation, State designation or State determination that the Regulated Entity needs a NPDES stormwater permit through the petition process. However, an earlier deadline exists for Regulated Entities as follows:
 - (1) 1990 decennial U.S. Census Regulated Entities must apply by March 10, 2003.
 - (2) Regulated municipally-operated industrial activities existing and in operation as of March 10, 2003 must apply by March 10, 2003.
 - (3) Regulated municipally-operated industrial facilities proposed to operate after March 10, 2003 must apply at least six months prior to the start-up date for the facility.
- (c) Regulated Entities that do not own or operate a MS4, shall be permitted in accordance with 15A NCAC 02H .1014.
- (d) Regulated Entities must include a program to implement the six minimum measures set out in 40 CFR 122.26 which is designed to reduce discharge of pollutants to the maximum extent practicable. Public entities may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of this section. The program must incorporate the six minimum measures as follows:
 - (1) A public education and outreach program to inform citizens of the impacts of stormwater discharges on water bodies and methods to reduce pollutants in stormwater runoff. The Regulated Entity may satisfy this requirement by developing a local education and outreach program, by participating in a statewide education and outreach program coordinated by the Department, or a combination of those approaches.
 - (2) A public involvement and participation program consistent with all applicable state and local requirements.
 - (3) A program to detect and eliminate illicit discharges within the jurisdiction or control of the Regulated Entity. The Regulated Entity may satisfy this requirement by developing a storm sewer system mapping process which will, at a minimum, identify stormwater outfalls and waters within the jurisdiction or control of the Regulated Entity, along with investigating illicit discharges and removing illicit discharges.

- (4) A program to reduce pollutants in any stormwater runoff to a MS4 or discharge which result from construction activities that arise from a land disturbance of an acre or more. Implementation and enforcement of the Sedimentation Pollution Control Act, G.S. 113A-50 et seq., by the Department or through a local program developed pursuant to G.S. 113A-54(b), in conjunction with the State's NPDES permit for construction activities, may be used to meet this minimum measure either in whole or in part.
 - (5) A program to address post-construction stormwater runoff from new development and redevelopment projects that cumulatively disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, that enter a Regulated Entity's discharge. A Regulated Entity may utilize the Department's model ordinance to fulfill this requirement. A Regulated Entity may also utilize the Department's post construction model practices to fulfill this requirement. A Regulated Entity may also utilize the Department's guidance on scientific and engineering standards for best management practices (BMPs) to develop an alternative program for this minimum measure where a demonstration is made that the alternative program shall provide:
 - (A) Equal or better stormwater management than the model practices;
 - (B) Equal or better protection of the waters of the State than the model practices; and
 - (C) Minimal potential for nuisance conditions.
 - (6) A pollution prevention/good housekeeping program for Regulated Entities that addresses operation and maintenance, including a training component, to prevent or reduce pollutant runoff from the Regulated Entity's operations.
- (e) Besides the state and local programs identified above, Regulated Entities may propose using any existing state and local programs that relate to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.
- (f) The six minimum measures must extend through the jurisdictional area, including any extraterritorial jurisdictional area under G.S. 160A-360, that drains to the MS4. Likewise, the six minimum measures must extend through the area of control of any discharger required to obtain a permit through the petition process.
- (g) Regulated Entities may implement a more stringent program than set out in the six minimum measures.
- (h) The Department may waive the permit requirement pursuant to 40 CFR 122.32(d) or 40 CFR 122.32(e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. (Pending Legislative Review).

15A NCAC 02H .0154 IMPLEMENTATION SCHEDULE

- (a) The public education and outreach minimum measure shall be implemented no later than 12 months from date of permit issuance.
- (b) The post-construction minimum measure must be implemented no later than 24 months from date of permit issuance. A new development or redevelopment approval issued by a Regulated Entity between the effective date of its NPDES permit and the adoption of its post-construction program does not need to incorporate post-construction requirements but does need to include a sunset date no longer than 12 months from the date of approval which shall cause the approval to expire unless the work authorized by the approval has substantially commenced. An example of substantially commenced for a subdivision is the completion of clearing, grubbing, and rough grading in public access areas such as dedicated right of ways.
- (c) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the Regulated Entity's stormwater management program based on the submitted application so that the Regulated Entity fully implements its permitted program within five years from permit issuance.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. (Pending Legislative Review).

15A NCAC 02H .0155 POST-CONSTRUCTION MODEL PRACTICES

Post-construction practices for new development and redevelopment projects as described in 15A NCAC 02H .0153(d)(5) are design standards that reduce or eliminate pollutants in stormwater runoff and remain in place beyond the construction phase of development. A Regulated Entity may develop its own comprehensive watershed plan, may use

the Department's model ordinance, may design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), or it may incorporate this Rule's post-construction model practices to fulfill the post-construction minimum measure program requirement. If a Regulated Entity chooses an option other than this Rule's post-construction model practices, the Regulated Entity's program for post-construction must meet or exceed the model practices' ability to reduce pollutants in stormwater runoff. The post-construction model practices are set out as follows:

- (1) Regulated Entities must require stormwater controls appropriate to a project's level of density as follows:
 - (a) Low Density. A low density project contains no more than 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or no more than 24 percent built-upon area if the project is located elsewhere. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the development. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff.
 - (b) High Density. A high density project exceeds the low density thresholds of 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or 24 percent built-upon area if the project is located elsewhere. High density projects must use structural stormwater management systems that will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will store and discharge the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:
 - (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm.
 - (iii) Remove an 85% average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
- (2) Regulated Entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Rule 02H .0156.
- (3) Regulated Entities must require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Regulated Entities must require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.
- (5) Regulated Entities must require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMP's required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
- (6) Regulated Entities may allow cluster development on a project-by-project basis only if the project meets all of the following criteria:
 - (a) Overall density of the project meets the low density thresholds of no more than 12 percent built-upon area for projects within one half mile of and draining to SA waters and no more than 24 percent built-upon area for all other projects.
 - (b) Built-upon areas, by design and location, minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the length of flow through vegetated areas.

- (c) Development areas that have density that is greater than the overall project area density are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
- (d) Areas other than built-upon areas within the project must remain undeveloped. The undeveloped area may be conveyed to a property owners association, a local government, or a conservation organization for preservation as a park or greenway. The undeveloped area may also be placed in a permanent conservation or farmland preservation easement. A maintenance agreement for the undeveloped area must be filed with the property deed.
- (e) The project transports stormwater through vegetated conveyances to the maximum extent practicable.
- (7) For areas draining to SA waters, Regulated Entities must:
 - (a) Use BMPs that result in the highest degree of fecal coliform die off and controls to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (b) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component (which may be achieved by revising an existing litter ordinance) and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems (which may be coordinated with local county health departments).
 - (c) Prohibit new points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (8) For areas draining to Trout Waters, Regulated Entities must:
 - (a) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (b) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (9) For areas draining to Nutrient Sensitive Waters, Regulated Entities must:
 - (a) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
 - (b) Implement a nutrient application (both inorganic fertilizer and organic nutrients) management program to reduce nutrients entering waters of the State.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0156 EXCEPTIONS

The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

- (1) An exception may be granted if the application meets the following criteria:
 - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the requirements. Practical difficulties and unnecessary hardships shall be evaluated in accordance with the following criteria:

- (i) The applicant cannot secure a reasonable return from, or use of, the applicant's property if the applicant complies with the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded.
 - (ii) The difficulty or hardship results from application of the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded to the property rather than from other factors such as pre-existing deed restrictions or other hardship.
 - (iii) The difficulty or hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring properties.
 - (iv) The applicant did not cause the difficulty or hardship by knowingly or unknowingly violating the six minimum measures' requirements.
 - (v) The applicant did not purchase the property after November 1, 2002 (the effective date of the temporary rule incorporating similar exceptions language), and then request an exception.
 - (vi) The difficulty or hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting an exception would be a special privilege denied to others, and would not promote equal justice.
 - (b) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit.
 - (c) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception. Moreover, the Division or delegated local authority shall consider whether the exception application presents the minimum possible deviation from the terms of the stormwater control requirements that will still allow reasonable use of the property.
- (2) Notwithstanding Paragraph (1) exceptions shall be granted in any of the following instances:
- (a) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (b) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility (such as water, sewer or gas) construction and maintenance corridor; as long as each of these is located 15 feet landward of all perennial and intermittent surface waters and as long as each of these is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (c) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to support the purpose, spirit and intent of the stormwater control requirements.
 - (4) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to protect water quality standards.
 - (5) Local authorities must document the exception procedure and submit an annual report on all exception proceedings.
 - (6) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1);
Eff. (Pending Legislative Review).

15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS

(a) Stormwater picks up pollutants as it drains to waters of the State. When a person alters stormwater drainage, which is prevalent in urbanizing areas, the pollutants carried by stormwater to waters of the State may be concentrated or increased, contributing to "water pollution" as defined in G.S. 143-213. The juncture at which stormwater reaches waters of the State will either be through the terminus of a pipe, ditch or other discrete outlet; or as a diffuse sheet flow.

(b) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section 02H .0100 entitled "Wastewater Discharges to Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(c) Other stormwater control requirements are mainly addressed in this section, Section 02H .1000 entitled "Stormwater Management," but may also be addressed in sections dedicated to particular water classifications or circumstances. For post-construction requirements, a program will be deemed compliant for the areas where it is implementing the Water Supply Watershed Protection Programs for WS-I – WS-IV waters, the HQW and freshwater ORW Waters Management Strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, or the Randleman Lake Water Supply Watershed Program. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules 02H .1014 through 02H .1019.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1;
Eff. (Pending Legislative Review).

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

State definitions for stormwater are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .1002, except for the definition of Built-Upon Area which is redefined below. Additional definitions for stormwater are set out as follows:

- (1) One-Year, 24-Hour Storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (2) Built - Upon Area means that portion of a development project, after construction is completed, that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement, and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (3) Division means the Division of Water Quality.
- (4) Existing Development means those projects that are complete or those projects that, are not yet complete, but, at a minimum, have established a vested right under North Carolina zoning law as of the effective date of the local government ordinance, or such earlier time that an affected local government's vested rights ordinance shall specify, based on at least one of the following criteria:
 - (a) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government stormwater approval to proceed with the project, or
 - (b) Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or
 - (c) Having an approved site-specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (5) Growing Population Area means an area with High Population Growth or Growth Potential.
- (6) Growth Potential means a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years or sharing to any extent a geographic boundary with a High Population Growth area.
- (7) High Population Growth means either a 10-year rate of growth exceeding 1.3 times the state population growth rate for that same period or a two-year rate of growth which exceeds 15 percent of its previous population.

- (8) Population Density means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the Total Population as defined in this Rule.
- (9) Public Entity means the United States, State of North Carolina, city, village, township, county, school district, public college or university, single purpose governmental agency, or any other governing body which is created by federal or state law.
- (10) Redevelopment means any rebuilding activity other than a rebuilding activity that;
 - (a) Results in no net increase in built-upon area, and
 - (b) Provides equal or greater stormwater control than the previous development.
- (11) Sensitive Receiving Waters means
 - (a) Waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 02B .0101(d) and (e);
 - (b) Waters which are occupied by, or designated as critical habitat for, federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544; or
 - (c) Waters for which the designated use, as set forth in the classification system at 15A NCAC 02B .0101(c),(d), and have been determined to be impaired in accordance with the requirements of 33 U.S.C. 1313(d).
- (12) Significant Contributor of Pollutants means an entity that allows its stormwater to:
 - (a) Contribute to a pollutant loading that may reasonably be expected to adversely affect the quality and uses of a water body; or
 - (b) Destabilize the physical structure of a water body such that the discharge reasonably may be expected to adversely affect the quality and uses of that water body.Uses of the waters shall be determined pursuant to 15A NCAC 02B .0211 - .0222 and 15A NCAC 02B .0300.
- (13) Total Maximum Daily Load (TMDL) means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.
- (14) Total Population means the sum of permanent and seasonal populations. The permanent population will be determined from the most recent data available from the Office of Budget and Management, State Demographer and the seasonal population will be determined from the most recent data available from the federal Bureau of the Census.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1016 URBANIZING COUNTY DESIGNATIONS

- (a) Urbanizing county designations shall be made through the federal designation process, the two-step State designation process, and the TMDL designation process. Projects within designated counties must comply with the permit application requirements set forth in 15A NCAC 02H .1017.
- (b) The following items apply in the designation process:
 - (1) Federal Designation Process.
Counties are designated as urbanizing counties if they are located in whole or in part within an Urbanized Area as determined by the most recent decennial U.S. census. The Department, within three months of federal verification of decennial census data, shall notify in writing all the counties identified.
 - (2) State Designation Process.
The Department shall designate additional urbanizing counties in a two-step process based on their geographical jurisdiction's potential to adversely affect water quality whether the effects constitute violations of water quality standards such as impairment of designated uses, or whether the effects constitute other types of significant water quality impacts such as adverse habitat and biological impacts. As a first step, the State will identify counties which are candidates for designation. As a second step, the State shall apply criteria to the identified counties to determine whether they shall be designated.

- (A) Step One: The Department shall identify counties as candidates for designation based on population. A county shall be identified as a candidate for designation if the county municipal and non-municipal Total Population is greater than 45,000 persons.
- (B) Step Two: From the identified counties, the Department shall designate those that contribute to a violation of a water quality standard by introducing stormwater to Sensitive Receiving Waters within a Growing Population Area or by providing Significant Contribution of Pollutants, taking into account the effectiveness of the public entities' existing water quality protection programs. Effectiveness of existing water quality programs shall be determined based upon the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300.
- (3) TMDL designation.
The Department shall designate counties that contain projects that introduce pollutants through urban stormwater Total Maximum Daily Load development.
- (4) State Designation Administration.
 - (A) The Department shall implement the designation process in accordance with the Department schedule for Basinwide Plans.
 - (B) The Department shall publish a list of counties identified as candidates for urbanizing county designation. Lists shall be developed for a river basin in accordance with North Carolina's Basinwide Planning Schedule. Publication of this list may be coordinated with public notices issued through basinwide planning efforts.
 - (C) The Department shall notify all counties identified as candidates for urbanizing county designation prior to the publication of the candidate list.
 - (D) The Department shall accept public comment on the application of the designation criteria to the counties identified as candidates for urbanizing county designation. A public comment period of not less than 30 days shall be provided.
 - (E) After review of the designation criteria and review of public comments received, the Department shall make a determination on designation for each of the candidates.
 - (F) The Department shall provide written notification to each county of its designation determination and the requirements for permits set out in Rule 15A NCAC 02H .1017.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1;
Eff. (Pending Legislative Review).

15A NCAC 02H .1017 APPLICATION SCHEDULE AND REQUIRED CONTENTS

Development projects in a designated urbanizing county must meet the following application schedule and requirements:

- (1) A project which cumulatively disturbs one acre or more of land within an urbanizing county's geographical jurisdiction must obtain a State stormwater permit prior to initiating the land disturbance. If the urbanizing county or other public entity within the geographical jurisdiction of the urbanizing county requests delegation of the State stormwater permit program, then the permit requirement may be suspended in the area requesting delegation until the Department delegates the program or denies the request for delegation. This suspension of permit requirements will occur only where the state has not already begun implementing the program or where a local program in the designated urbanizing county sufficient to meet the state stormwater permit program requirements is not already in place.
- (2) Applications for a permit must be submitted on Department forms to the Department or delegated authority.
- (3) The Department may approve delegation of the State stormwater permit program to an urbanizing county or other public entity within the geographical jurisdiction of the urbanizing county, if the public entity develops and implements a comprehensive watershed protection plan that may be used to meet the post-construction measure. Alternatively, the Department may approve delegation if the public entity uses the Department's model ordinance and post-construction model practices to create a program that will implement the post-construction measure throughout the public entity's jurisdiction. The Department may also approve delegation if the public entity develops a program to implement the post-construction measure that either meets or exceeds the Department's model ordinance or practices.

Such delegated programs may reduce the number of site-specific programs for projects by incorporating ordinances or programs that address the entire public entity's jurisdiction so that each project developer need not obtain a State permit.

- (4) Permit applications must demonstrate that the applicant shall meet the post-construction measure that requires implementation of a program to address post-construction stormwater runoff from new development and redevelopment projects. A permit applicant may utilize the Department's post construction model practices to fulfill this requirement. A permit applicant may also utilize the Department's guidance on scientific and engineering standards for best management practices (BMPs) to develop an alternative program for the post-construction measure where a demonstration is made that the alternative program shall provide:
 - (a) Equal or better stormwater management than the model practices;
 - (b) Equal or better protection of the waters of the State than the model practices; and
 - (c) Minimal potential for nuisance conditions.
- (5) Besides the state and local programs identified above, permit applicants or delegated programs may propose using any existing state or local programs that relate to the post-construction measure, either in whole or in part.
- (6) Permit applicants may submit a more stringent program than set out in the Department's model ordinance and model post-construction practices.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1018 POST-CONSTRUCTION MODEL PRACTICES

Post-construction practices for new development and redevelopment projects as required by 15A NCAC 02H .1017(4) are design standards that reduce or eliminate pollutants in stormwater runoff and remain in place beyond the construction phase of development. A permit applicant or delegated program may develop its own comprehensive watershed plan, may use the Department's model ordinance, may design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), or it may incorporate this Rule's post-construction model practices to fulfill the post-construction minimum measure program requirement. If a permit applicant or delegation applicant submits an option other than this Rule's post-construction model practices, the program for post-construction must meet or exceed the model practices' ability to reduce pollutants in stormwater runoff. The post-construction model practices are set out as follows:

- (1) Permittees or delegated programs must require stormwater controls appropriate to a project's level of density as follows:
 - (a) **Low Density.** A low density project contains no more than 12 percent built-upon area, as this term is defined in 15A NCAC 02H .1002(1), if the project is within one-half mile of and draining to SA waters or no more than 24 percent built-upon area if the project is located elsewhere. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the development. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff.
 - (b) **High Density.** A high density project exceeds the low density thresholds of 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or more than 24 percent built-upon area if the project is located elsewhere. High density projects must use structural stormwater management systems that will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will store and discharge the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:
 - (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Release the storage volume at a rate equal or less than the pre-development release rate for the one-year, 24-hour storm.
 - (iii) Remove an 85% average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).

- (2) Permittees or delegated programs must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Rule 02H .1019.
- (3) Permittees must implement or delegated local programs must require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees must implement or delegated programs must require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.
- (5) Permittees must implement or delegated programs must require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMP's required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the state or delegated program.
- (6) Permittees or delegated programs may allow cluster development on a project-by-project basis only if the project meets all of the following criteria:
 - (a) Overall density of the project meets the low density thresholds of no more than 12 percent built-upon area for projects within one half mile of and draining to SA waters and no more than 24 percent built-upon area for all other projects.
 - (b) Built-upon areas, by design and location, minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the length of flow through vegetated areas.
 - (c) Development areas that have density that is greater than the overall project area density are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
 - (d) Areas other than built-upon areas within the project must remain undeveloped. The undeveloped area may be conveyed to a property owners association, a local government, or a conservation organization for preservation as a park or greenway. The undeveloped area may also be placed in a permanent conservation or farmland preservation easement. A maintenance agreement for the undeveloped area must be filed with the property deed.
 - (e) The project transports stormwater through vegetated conveyances to the maximum extent practicable.
- (7) For areas draining to SA waters, permittees or delegated programs must:
 - (a) Use BMPs that result in the highest degree of fecal coliform die off and controls to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (b) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component (which may be achieved by revising an existing litter ordinance) and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems (which may be coordinated with local county health departments).
 - (c) Prohibit new outlets of stormwater to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater flow through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be

- considered an outlet of stormwater. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (8) For areas draining to Trout Waters, permittees or delegated programs must:
 - (a) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (b) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
 - (9) For areas draining to Nutrient Sensitive Waters, permittees or delegated programs must:
 - (a) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.
 - (b) Implement a nutrient application (both inorganic fertilizer and organic nutrients) management program to reduce nutrients entering waters of the State.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1019 EXCEPTIONS

The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants as follows:

- (1) An exception may be granted if the application meets the following criteria:
 - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the requirements. Practical difficulties and unnecessary hardships shall be evaluated in accordance with the following criteria:
 - (i) The applicant cannot secure a reasonable return from, or use of, the applicant's property if the applicant complies with the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded.
 - (ii) The difficulty or hardship results from application of the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded to the property rather than from other factors such as pre-existing deed restrictions or other hardship.
 - (iii) The difficulty or hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring properties.
 - (iv) The applicant did not cause the difficulty or hardship by knowingly or unknowingly violating the six minimum measures' requirements.
 - (v) The applicant did not purchase the property after November 1, 2002 (the effective date of the temporary rule incorporating similar exceptions language), and then request an exception.
 - (vi) The difficulty or hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting an exception would be a special privilege denied to others, and would not promote equal justice.
 - (b) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit.
 - (c) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception. Moreover, the Division or delegated local authority shall consider whether the exception application presents the minimum possible deviation from the terms of the stormwater control requirements that will still allow reasonable use of the property.

- (2) Notwithstanding Paragraph (1) exceptions shall be granted in any of the following instances:
 - (a) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (b) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility (such as water, sewer or gas) construction and maintenance corridor; as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (c) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to support the purpose, spirit and intent of the stormwater control requirements.
- (4) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to protect water quality standards.
- (5) Local authorities must document the exception procedure and submit an annual report on all exception proceedings.
- (6) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).