

## SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

## SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

**15A NCAC 02H .0101 PURPOSE**

(a) These Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).

(b) Rules and Statutes referenced in this Section may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations:

- Permits and Engineering Unit, Archdale Building  
P.O. Box 29535, 512 N. Salisbury St.,  
Raleigh, N.C. 27626-0535
- Raleigh Regional Office  
3800 Barrett Dr.,  
Raleigh, N.C. 27611
- Asheville Regional Office  
59 Woodfin Pl.,  
Asheville, N.C. 28802
- Mooresville Regional Office  
919 N. Main St.,  
Mooresville, N.C. 28115
- Fayetteville Regional Office  
Wachovia Bldg. Suite 714,  
Fayetteville, N.C. 28301
- Washington Regional Office  
1424 Carolina Avenue,  
Washington, N.C. 27889
- Wilmington Regional Office  
127 Cardinal Drive Extension,  
Wilmington, N.C. 28405-3845
- Winston-Salem Regional Office  
8025 North Point Blvd.,  
Winston-Salem, N.C. 27106

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1;  
Eff. February 1, 1976;  
Amended Eff. August 3, 1992; August 1, 1988; October 1, 1987; December 1, 1984.

**15A NCAC 02H .0102 SCOPE**

These Rules apply to all persons:

- (1) discharging or proposing to discharge waste to the surface waters of the state; or
- (2) constructing or proposing to construct a treatment or pretreatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (3) operate or propose to operate a treatment works with a discharge as described in Part (1) or (2) of this Rule; or
- (4) discharging or proposing to discharge stormwater which results in water pollution.

This Rule does not apply to those persons who have obtained a permit from a local pretreatment control authority, authorized to issue such permits, and whose pretreatment program was approved in accordance with Section .0900 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1; 143-215.3(a)(14);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987; December 1, 1984.*

### 15A NCAC 02H .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
  - (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
  - (3) "Commission" means the Environmental Management Commission.
  - (4) "Committee" means the NPDES committee of the Environmental Management Commission.
  - (5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.
  - (6) "Department" means the Department of Environment and Natural Resources.
  - (7) "Director" means the Director of the Division of Water Quality, Department of Environment and Natural Resources or his designee.
  - (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
  - (9) "Division" means the Division of Water Quality, Department of Environment and Natural Resources.
  - (10) "EPA" means the United States Environmental Protection Agency.
  - (11) "Existing", with respect to implementing the NPDES permitting program, means:
    - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
    - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
    - (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.
- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.
  - (13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
  - (14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.
  - (15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.
  - (16) "New", with respect to implementing the NPDES permitting program, means:
    - (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
    - (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
    - (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

- For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.
- (17) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.
  - (18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
  - (19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.
  - (20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
  - (21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
  - (22) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.
  - (23) "POTW" means Publicly Owned Treatment Works.
  - (24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
  - (25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is 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 thirty-six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.
  - (26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
  - (27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
  - (28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
  - (29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.
  - (30) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources.
  - (31) "Stormwater" is defined in G.S. 143, Article 21.
  - (32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.
  - (33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.
  - (34) "Trout farm" means a facility for the commercial production of trout.
  - (35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

*History Note:* Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991;

*Temporary Amendment Eff. May 11, 2001;  
Temporary Amendment Expired on February 26, 2002;  
Amended Eff. April 1, 2003.*

#### 15A NCAC 02H .0104 REQUIRED PERMITS

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.1(a);  
Eff. February 1, 1976;  
Amended Eff. December 1, 1984;  
Repealed Eff. November 1, 1987.*

#### 15A NCAC 02H .0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources.

The State NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	All municipal systems greater than or equal to 1.0 MGD and any municipal system receiving industrial waste from a primary industry.
Short Form A:	Any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial or process and commercial discharges except
EPA Forms 1 and 2-C:	cooling waters, cooling tower blowdown, and boiler blowdown.
EPA Forms 1 and 2F:	Discharges consisting entirely of stormwater associated with industrial activity.
EPA Forms 1 and 2D:	Discharges consisting of stormwater and non-stormwater.
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.

The Authorization to Construct and Notice of Intent application forms to be used will be supplied by the Division.

#### (b) Permit Fees.

- (1) Permit Application Processing Fees. For every application for new or renewed NPDES permits, Notice of Intent to be covered by a general permit or Authorization to Construct, a nonrefundable application processing fee in the amount stated in Subparagraph (b)(5) of this Rule shall be submitted at the time of application.
  - (A) Each permit or renewal application is incomplete until the processing fee is received.
  - (B) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
  - (C) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the Director.
  - (D) An application processing fee of one hundred dollars (\$100.00) will be charged for the minor modifications listed in Rule .0114(b) of this Section.
  - (E) A full processing fee will be charged for modifications other than those listed in Rule .0114(b) of this Section; this fee will be in the same amount as shown in Subparagraph (5) of Paragraph (c) of this Rule for new applications/modifications.
  - (F) Permittees requesting special orders by consent, judicial orders or flow increases under G.S. 143-215.67(b), will pay a fee of four hundred dollars (\$400.00).
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, according to the schedule in Subparagraph (b)(5) of this Rule.
  - (A) Collection of annual fees shall begin on the effective date of this Rule.
  - (B) Annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.

- (C) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge to the waters of the state with the highest fee in the fee schedule.
  - (D) A person with only one permit will be billed annually on an anniversary date to be determined by the Division. This will normally be the first day of the month of permit issuance.
  - (E) A person with multiple permits may have annual fees consolidated into one annual bill.
  - (F) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the Director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the Director can send a letter of correction to the permittee clearing the record for compliance purposes.
  - (G) Permit Application Processing Fees and Annual Administering and Compliance Monitoring Fees for pretreatment facilities permitted by the Division shall be at the same rate as provided in Subparagraph (b)(5) of this Rule.
- (3) No fees are required to be paid under this Rule by a farmer who submits an application or receives a permit that pertains to farming operations.
  - (4) Failure to pay an annual fee within 30 days after being billed may cause the Division to initiate action to revoke the permit.
  - (5) Schedule of Fees:

Category	Permit Application Processing Fee		Annual Administering And Compliance Monitoring	
	New Applications/ Modifications/ Late Renewals	Timely Renewals Without Modifications	Standard	In Compliance
<b>&gt;10,000,000 GPD</b>				
Industrial	\$400.	\$400.	\$1500.	\$1125.
Domestic/Cooling Water	400.	400.	1500.	1125.
<b>1,000,001 - 10,000,000 GPD</b>				
Industrial	400.	300.	1500.	1125.
Domestic/Cooling Water	400.	300.	1200.	900.
<b>100,001 - 1,000,000 GPD</b>				
Industrial	400.	250.	800.	600.
Domestic/Cooling Water	400.	250.	600.	450.
<b>1,001 - 100,000 GPD</b>				
Industrial	400.	200.	600.	450.
Domestic/Cooling Water	400.	200.	450.	300.
<b>&lt;=1,000 GPD and Single family dwelling</b>				
	240.	240.	0	0
Stormwater - Municipal Separate				

Stormwater System	400.	400.	600.	450.
Industrial Activity	400.	400.	600.	450.
Stormwater				
General Permits				
Construction (Stormwater)	50.	50.	n/a	n/a
Domestic	240.	240.	n/a	n/a
Others	400.	400.	n/a	n/a
Authorization to Construct (Permitted Flow)				
>=100,001 GPD	200.	n/a	n/a	n/a
<=100,000 GPD	150.	n/a	n/a	n/a
<=1,000 GPD	100.	n/a	n/a	n/a

- (6) If the total payment for fees required for all permits under G.S. 143-215.3(a)(1b) for any single facility will exceed seventy-five hundred dollars (\$7,500.00) per year, the total for all these fees will be reduced for this facility so that the total payment is seventy-five hundred dollars (\$7,500.00) per year.
  - (7) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (b)(5) of this Rule will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:
    - (A) All nonmunicipal facilities treating wastewater which is predominantly domestic waste with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars (\$75.00);
    - (B) Single family dwellings, forty dollars (\$40.00);
    - (C) All other facilities, zero.
  - (8) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (7) of this Paragraph. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application processing fees as listed in Subparagraph (b)(5) of this Rule shall be charged.
  - (9) In order to avoid violation of the statutory limit that total permit fees collected in any year not exceed 30 percent of the total budgets from all sources of environmental permitting and compliance programs, the Division shall in the first half of each state fiscal year project revenues from all sources including fees for the next fiscal year. If this projection shows that the statutory limit will be exceeded, rulemaking shall be commenced in order to have an appropriately adjusted fee schedule which will avoid excessive revenue collection from permit fees.
  - (10) Any applicant whose facility qualifies for a general permit under Rule .0127 of this Section may pay the lower fees set in Subparagraph (b)(5) of this Rule for the appropriate general permit.
- (c) Applicants for new NPDES permits requiring construction of water pollution control facilities shall in addition to applications required in Paragraph (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:
- (1) a description of the origin, type and flow of waste which is proposed to be discharged. Justification and a demonstration of need shall be provided for expected flow volumes. Flow shall be determined in accordance with 15A NCAC 2H .0219(1);
  - (2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;
  - (3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment

- capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;
- (4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);
  - (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
  - (6) special studies or modeling may be required in cases where the impacts of the discharge cannot be readily determined by the Division;
  - (7) a statement to demonstrate financial qualification and substantial previous compliance with federal and state laws, regulations, and rules for the protection of the environment as required by G.S. 143-215.1(b)(4)(b).
- (d) Applicants for new individual NPDES permits requiring construction of stormwater control facilities shall in addition to applications required in Paragraph (a) of this Rule, design and construct the facilities in accordance with criteria approved by the Director, or shall file in triplicate, an engineering proposal setting forth the information required in Paragraph (c) of this Rule.
- (e) Applications for permit renewals shall be accomplished by filing the appropriate application form as listed in Paragraph (a) of this Rule, with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources, at least 180 days prior to expiration of a permit. Renewal requests received less than 180 days prior to permit expiration will be required to pay the new application/modification/late renewal fee rather than the timely renewal without modification fee. The notice and public participation procedures set forth in Rules .0109 and .0111 of this Section shall be followed for each request for permit renewal. An acceptable residuals management plan shall be submitted with the application for permit renewal in accordance with Rule .0138(b)(8) of this Section. Authorizations to Construct permits for wastewater control facilities will not be subject to the notice and public participation procedures set forth in Rules .0109 and .0111 of this Section. Authorizations to Construct may be issued for any length of time, however, the NPDES permit must be in effect at time of construction. All applications are incomplete until required processing fees are received, and may be returned to the applicant.
- (f) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the Director and submitted along with applicable supporting information to the Division of Environmental Management.
- (g) Applications for permits for new discharges which propose to discharge industrial process or domestic wastewater in excess of 500,000 gallons per day or 10 MGD of cooling water to the surface waters shall file, in addition to the applications and supporting documents required in Paragraphs (a) and (b) of this Rule, an assessment which shall meet the requirements of 1 NCAC 25 .0502. Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this Subsection provided aquatic impacts are adequately addressed.
- (h) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.
- (i) Applicants for permits for new nonmunicipal domestic wastewater discharges shall file a notarized statement indicating whether or not each city or county government having jurisdiction over any part of the lands on which the proposed facility is to be located has a zoning or subdivision ordinance in effect, and, if such an ordinance is in effect, whether or not the proposed facility is consistent with the ordinance.
- (j) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance with 40 CFR 122.21 Appendix D which are hereby incorporated by reference including any subsequent amendments and editions, and for other direct discharges as required by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00).

*History Note:* Authority G.S. 143-215.1(c); 143-215.1(c)(6); 143-215.3(a); 143-215.3B;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1991; October 1, 1990; August 1, 1988.

**15A NCAC 02H .0106 FILING APPLICATIONS**

(a) Permit applications shall be filed with the Director, Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina, 27699-1617.

(b) All NPDES permit applications, except those addressed in Paragraph (d) of this Rule, shall be filed at least 180 days in advance of the date on which an existing permit expires or in sufficient time prior to the proposed commencement of a waste discharge to ensure compliance with all legal procedures.

(c) All Authorization to Construct applications shall be filed at least 90 days in advance of the proposed commencement date of construction of water pollution control facilities but no earlier than the establishment of effluent limitations.

(d) All NPDES stormwater construction permit applications shall be filed in advance of the proposed commencement date of land disturbing activity which results in a stormwater discharge.

(e) Permit applications filed with the Director shall be signed as follows:

- (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the permit application form originates;
- (2) in the case of a partnership or a limited partnership, by a general partner;
- (3) in the case of a sole proprietorship, by the proprietor;
- (4) in the case of a municipal, state, or other public entity by either a principal executive officer, ranking elected official or other duly authorized employee.

(f) The following discharges are deemed to be permitted pursuant to G.S. 143-215.1(c) provided that no water quality standards are contravened, or expected to be contravened, and it shall not be necessary for the Division to issue separate permits for these activities:

- (1) filter backwash and draining associated with swimming pools;
- (2) filter backwash from raw water intake screening devices;
- (3) condensate from residential or commercial air conditioning units;
- (4) individual non-commercial vehicle washing operations;
- (5) flushing and hydrostatic testing water associated with utility distribution systems;
- (6) discharges associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
- (7) groundwaters generated by well construction or other construction activities;
- (8) landscape irrigation, foundation or footing drains, or water from crawl space pumps;
- (9) street wash water;
- (10) flows from fire fighting; and
- (11) excluding the provision in Subparagraph (f)(6) of this Rule, discharges associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following specific conditions:
  - (A) the volume of discharge produced by the decontamination activity is too large to be contained on-site;
  - (B) the Division of Water Quality is informed prior to commencement of the discharge from the decontamination activity;
  - (C) overland flow or other non-discharge options are deemed to be impractical by the authorities conducting the decontamination activity; and
  - (D) the discharge is not radiologically contaminated.

*History Note:* Authority G.S. 106-399.4; 143-215.1(c); 143-215.1(b)(3); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987; January 1, 1984; November 1, 1978;  
Temporary Amendment Eff. May 11, 2001;  
Temporary Amendment Expired on February 26, 2002;  
Amended Eff. April 1, 2003.

**15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION**

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Division of Environmental Health, Department of Environment, Health, and Natural Resources, for review and written approval.

(b) The Director shall acknowledge receipt of a complete NPDES or Authorization to Construct application or, if not complete, may return the application to the applicant as incomplete or request the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(c) Tentative Determination and Draft individual NPDES Permit.

- (1) The staff shall conduct a site investigation and shall prepare its written evaluation and tentative determination to issue or deny the NPDES permit. On-site investigations will not be necessary for Authorization to Construct permits, activities covered under general permits and renewal of individual permits with no modifications.
- (2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the permit, it shall if necessary make the following additional determinations in writing:
  - (A) proposed effluent limitations for those pollutants proposed to be limited;
  - (B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and
  - (C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- (3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft permit.

(d) In the case of permits for which notice of intent is given on forms as described in Rule .0105(a) of this Section, a Certificate of Coverage under a general permit may be prepared and issued directly to the applicant in lieu of any other acknowledgment. If the Notice of Intent is unacceptable, it will be returned to the applicant with an explanation of the inadequacies.

*History Note:* Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a); 143-215.1(c);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988; October 1, 1987.

**15A NCAC 02H .0108 FACT SHEETS**

(a) For all discharges which do not qualify for a general NPDES permit and which have a total volume of 500,000 or more gallons on any day, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) a sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application which includes at least the following:
  - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
  - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
  - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required under Rule .0107 of this Section;
- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and

- (5) a more detailed description of the procedures for the formulation of final determinations than that given in a public notice including:
  - (A) the 30-day comment period required by Rule .0110 of this Section,
  - (B) procedures for requesting a public meeting and the nature thereof, and
  - (C) any other procedures by which the public may participate in the formulation of the final determinations.
- (b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(a);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987.

### 15A NCAC 02H .0109 PUBLIC NOTICE

#### (a) Notice of Application

- (1) Public notice of each complete individual NPDES permit application and each general NPDES permit shall be circulated in the geographical areas of the proposed discharge by the Director at least 45 days prior to any proposed final action:
  - (A) by publishing the notice one time in a newspaper having general circulation in said county; and
  - (B) by mailing the notice to all persons or agencies listed in Subsection (c) of this Rule.
- (2) The notice shall set forth at least the following:
  - (A) name, address, and phone number of the agency issuing the public notice;
  - (B) name and address of each applicant;
  - (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
  - (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
  - (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
  - (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
  - (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.
- (3) Public notice for those activities covered by Certificates of Coverage issued pursuant to a general permit and Authorizations to Construct shall not be required.

#### (b) Notice of Public Meeting

- (1) Notice of public meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the Director at least 30 days prior to the date of the meeting:
  - (A) by publishing the notice one time in a newspaper having general circulation in said county;
  - (B) by mailing the notice to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and
  - (C) by mailing the notice to any person or group upon request.
- (2) The notice of any public meeting shall include at least the following:
  - (A) name, address, and phone number of agency holding the public meeting;
  - (B) name and address of each applicant whose application will be considered at the meeting;
  - (C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

- (D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;
- (E) information regarding the time and location for the meeting;
- (F) the purpose of the meeting;
- (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and
- (H) a brief description of the nature of the meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Environment, Health, and Natural Resources at the Archdale Building at 512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the Director shall mail such notice to any such person. An annual charge of twenty-five dollars (\$25.00) may be charged for any person desiring to be placed and maintained on the NPDES Permit mailing list. The Director shall also give notice to the following for NPDES permits:

- (1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;
- (2) Appropriate district engineer, U.S. Army Corps of Engineers;
- (3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;
- (4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;
- (5) North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health; and
- (6) Any other federal, state, or local agency upon request.

*History Note:* Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; August 1, 1988; October 1, 1987; December 1, 1984.

#### **15A NCAC 02H .0110 RESPONSE TO PUBLIC NOTICE**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(3); 143-215.3(a)(3); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1987.

#### **15A NCAC 02H .0111 MEETINGS AND HEARINGS**

(a) Public Meetings:

- (1) The Director shall provide an opportunity for the applicant, any affected state, any affected interstate agency, the regional administrator, or any interested agency, person, or group of persons to request or petition for a public meeting with respect to NPDES permit applications. Any person who desires a public meeting on any NPDES permit application shall so request in writing to the Director within 30 days following the publication date of the notice of application. Any such request or petition for public meeting shall indicate the interest of the party filing such request and the reasons why a meeting is warranted.
- (2) The Director is delegated authority to determine if a public meeting shall be held in accordance with G.S. 143-215.1(c)(3) and to issue public notice and conduct such meeting for the Commission.

- (3) All comments received within 30 days following the publication date of the notice of NPDES permit application shall be made part of the application file and shall be considered by the Director prior to taking final action on the application.
  - (4) Any meeting brought pursuant to this Subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.
- (b) Adjudicatory Hearings and appeals shall be conducted in accordance with Article 3 of Chapter 150B of the General Statutes.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.5; 143-215.1(e);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987.

### 15A NCAC 02H .0112 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director shall take final action on all NPDES applications not later than 60 days following notice of intent to issue or deny, or, if a public meeting is held, within 90 days following the closing of the record of the meeting or in the case of an Authorization to Construct permit 90 days after the receipt of a complete application or, if a public meeting is held concerning the Authorization to Construct, within 90 days following the closing of the record of the meeting.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143-215.1 and G.S. 143-215.67;
- (2) issue a permit containing time schedules for achieving compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements;
- (3) modify or revoke any permit upon giving 60 days notice to the person affected pursuant to Rule .0114(a) of this Section;
- (4) suspend a permit pursuant to Rule .0114(a) of this Section;
- (5) rescind a permit upon request by the permittee;
- (6) deny a permit application:
  - (A) where necessary to effectuate the purposes of Article 21 Chapter 143,
  - (B) for a discharge prohibited by G.S. 143-214.2(a),
  - (C) where the Secretary of the Army finds the discharge would substantially impair anchorage and navigation,
  - (D) for a discharge to which the regional administrator of EPA has objected as provided in Section 402(d) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq,
  - (E) for any point discharge which conflicts with a plan approved pursuant to Section 208(b) of the Clean Water Act as amended, 33 U.S.C. Section 1251 et seq, effective February 4, 1987.

(c) The permit applicant has the burden of providing sufficient evidence to reasonably ensure that the proposed system will comply with all applicable water quality standards and requirements. No permit may be issued when the imposition of conditions cannot reasonably ensure compliance with applicable water quality standards and regulations of all affected states.

(d) Permits shall be issued or renewed for a period of time deemed reasonable by the Director except in no case shall permits be issued for a period to exceed five years.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(c)(4); 143-215.1(b); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.1(c)(5); 143-214.2(a); 143-215; 143-215.2(a);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; September 1, 1986; December 1, 1984.

**15A NCAC 02H .0113 NOTIFICATION OF APPLICANTS**

The Director shall notify an applicant of the final decision of the applicant's permit application. Notifications of denial shall be made by certified mail and shall specify the reasons therefor and the proposed changes which in the opinion of the Director will be required to obtain the permit.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(a); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Amended Eff. October 1, 1987.

**15A NCAC 02H .0114 MODIFICATION AND REVOCATION OF PERMITS**

(a) Any permit issued pursuant to this Section is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for any of the following:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and
- (4) refusal of the permittee to permit the Director or his authorized representative upon presentation of credentials:
  - (A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,
  - (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
  - (C) to inspect any monitoring equipment or method required in the permit, or
  - (D) to sample any discharge of pollutants.
- (5) failure to pay the annual fee for administering and compliance monitoring.

(b) Modifications and reissuance of permits shall be subject to the same public notice and other procedural requirements as the issuance of permits except as follows:

- (1) modifications of the monitoring program contained in the permit,
- (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,
- (3) a single modification of any compliance schedule not in excess of four months,
- (4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
- (5) modifications to include or amend pretreatment program requirements,
- (6) issuance of permits revoked for failure to pay the annual administering and compliance monitoring fee,
- (7) modifications determined by the Director to be minor, such as typographical errors, incorrect maps, and similar minor changes.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; September 1, 1988; November 1, 1987.

**15A NCAC 02H .0115 PUBLIC ACCESS**

(a) All records, reports, and information required to be submitted to the Commission or the Director; any public comment on these records, reports or information; and the draft and final permits shall be disclosed upon request to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets.

(b) The Director is authorized to determine information which is entitled to confidential treatment. In the event the Director determines that such information (other than effluent data) is entitled to confidential treatment, he shall take

steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.

(c) The Director shall:

- (1) provide facilities for the inspection of information relating to permit applications and permits,
- (2) ensure that the staff handle request for such inspections promptly,
- (3) ensure that copying machines or devices are available for a reasonable fee.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(2); 143-215.3(a)(4); 132-6; 143-215.65;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987.

#### **15A NCAC 02H .0116 EMERGENCY PROCEDURES**

If the Director determines any threatened or continuing violations exist which warrant immediate action, the Director shall so notify the Commission or the secretary who may exercise emergency powers pursuant to G.S. 143-215.3(a)(8), 143-215.13(d), 143-215.6(c), or 143-215.3(a)(12).

*History Note:* Authority G.S. 143-215.3(a)(8); 143-215.13(d); 143-215.6(c);  
Eff. February 1, 1976;  
Amended Eff. December 1, 1984; November 1, 1978.

#### **15A NCAC 02H .0117 INVESTIGATIONS: MONITORING: AND REPORTING**

(a) Staff of the Department of Environment, Health, and Natural Resources are authorized to conduct any investigations as provided in G.S. 143-215.3(a)(2), (7), and (9) for the purpose of determining compliance with water quality standards, effluent limitations, permit conditions and any duly adopted rule of the Commission.

(b) Any person subject to the provisions of G.S. 143-215.1 shall comply with the monitoring and reporting requirements of Rules in Section 15A NCAC 2B .0500.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4); 143-215.3(a)(2); 143-215.3(a)(7); 143-215.1(b)(1); 143-215.3(a)(9); 143-215.63;  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; November 1, 1978.

#### **15A NCAC 02H .0118 EFFLUENT LIMITATIONS AND STANDARDS**

Any state NPDES permit will contain effluent limitations and standards required by 15A NCAC 2B .0400 and the Clean Water Act which is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies of the Clean Water Act may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of fifty dollars (\$50.00). That rule contains the effluent standards and limitations for ensuring compliance with Sections 301, 302, 306, and 307 of the Clean Water Act. For effluent limited stream segments, the rule incorporates by reference federal effluent limitations and guidelines as state effluent limitations and guidelines. For water quality limited stream segments, the rules provide that effluent limitations be calculated by the staff and approved by the Director, to comply with Section 301(b)(1)(C) of the federal act.

*History Note:* Authority G.S. 143-213(23); 143-215; 143-215.1(b)(1); 143-215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993; November 1, 1987.

**15A NCAC 02H .0119 DISCHARGES OF 50,000 GALLONS PER DAY OR LESS**

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Repealed Eff. December 1, 1984.

**15A NCAC 02H .0120 LIMITATION ON DELEGATION**

The Director is authorized to delegate any or all of the functions contained in this Section except the following:

- (1) denial of a permit application,
- (2) suspension of a permit,
- (3) revocation of a permit not requested by the permittee,
- (4) modification of a permit where initiated by the Division and which does not fall within the exceptions listed in Rule .0114(b) of this Section, or
- (5) determination of confidentiality.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993.

**15A NCAC 02H .0121 SUSPENSION OF REQUIREMENT FOR STATE NPDES PERMITS**

(a) The Commission finds that an NPDES Permit issued by the U.S. Environmental Protection Agency will serve in lieu of a State Permit under 15A NCAC 2H .0104 and G.S. 143-215.1 so long as the Federal Permit is valid.

(b) Nothing in this Rule shall prevent the Commission from enforcing laws and regulations which by their terms are applicable without a G.S. 143-215.1 permit.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1; 143B-282;  
Eff. December 1, 1976;  
Amended Eff. December 1, 1984.

**15A NCAC 02H .0122 CONCENTRATED ANIMAL FEEDING OPERATIONS**

Part 122.23 of Title 40 of the Code of Federal Regulations, entitled "Concentrated Animal Feeding Operations", is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty dollars (\$30.00).

*History Note:* Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1);  
Eff. December 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; June 7, 1981.

**15A NCAC 02H .0123 REQUIREMENTS: EVALUATING FEEDLOT PERMIT APPLICATIONS**

(a) Guidelines. Upon identifying any concentrated animal feeding operation or animal feeding operation that the staff has reason to believe should or could be regulated under this permit program, the staff shall conduct an on-site inspection of such operation, and shall make the following determinations as a result thereof:

- (1) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (a) of Appendix B of those regulations, does a discharge of pollutants occur to the surface waters of the state by any means, as a result of any rainfall event less severe than a 25-year, 24 hour event.
- (2) For a concentrated animal feeding operation as described in 40 CFR 122.23(b)(3) and Paragraph (b) of Appendix B of those regulations;
  - (A) Does a pollutant discharge occur to the surface waters of the state through a man-made ditch, flushing system, or similar man-made device; or

- (B) Does a pollutant discharge occur to the surface waters of the state which originate outside of and pass over, across, through, or otherwise come in contact with animals confined in the operation, as a result of any rainfall event less severe than a 25-year, 24 hour event.
- (3) Case-by-Case Determination
  - (A) For an animal feeding operation not otherwise falling within the definition provided in 40 CFR 122.23(b)(3):
    - (i) Does a pollutant discharge occur to the state's surface waters through a man-made ditch, flushing system, or similar man-made device; or
    - (ii) Does a pollutant discharge occur to the state's surface waters which originate outside of and pass over, across, through, or otherwise come into direct contact with animals confined in the operation as a result of any rainfall event less severe than a 25-year, 24 hour event.
  - (B) If the staff determines that a discharge occurs under either (3)(A)(i) or (3)(A) (ii) of this Paragraph, then such an animal feeding operation may be designated by the Director, Division of Environmental Management, as a concentrated animal feeding operation. In making such designation, the Director shall consider the following factors:
    - (i) The size of the animal feeding operations; the amount of waste therefrom reaching the state's surface waters;
    - (ii) The operation's location relative to the surface waters of the state;
    - (iii) The means of conveyance of animal wastes or process waste waters into the surface waters of the state;
    - (iv) The degree of slope, nature of vegetation, extent of rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into the state's surface waters;
    - (v) Other factors relative to the significance of the pollution problem sought to be regulated;
    - (vi) Does a discharge of pollutants occur which results in a violation of water quality standards, as a result of any rainfall event less severe than a 25-year, 24 hour event.

(b) Notice to Apply for Permit. If the field determination verifies that a discharge from an animal feeding operation or concentrated animal feeding operation occurs under any of the conditions listed in Paragraph (a)(1) to (3) of this Rule, the Director shall give written notice to the owner or operator of the concentrated animal feeding operation, that he must submit an application for a permit. The notice shall specify that if the owner or operator can permanently eliminate a discharge of pollutants to the surface waters of the state, by such minor changes as can be affected within 60 days of the receipt of notice to submit a permit application (such as, but not limited to, diversion of outside drainage from pen areas, modifications to lagoons, closing off drainage ditches) a permit application will not be required. If modifications necessary to eliminate permanently discharges of pollutants to surface waters of the state cannot or are not completed within 60 days of receipt of notice, a permit application must be submitted.

(c) Permit Applications. Permit applications as required by 40 CFR 122.21 will be available in the Division of Environmental Management regional offices. On determination that an application should be submitted, the applicant shall forward a completed application with supporting information required by Rules .0105 to .0109 of this Section. Applications with supporting documentation are to be mailed to the Director, Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535. On receipt of the application, a representative of the Division of Environmental Management will conduct an inspection to determine whether a permit is required. If a permit is required, the application will be processed. If not, it will be returned without action. Those concentrated animal operations that can alleviate the requirement to have a permit through minor modifications to facilities will be given 60 days to make such modifications prior to processing the permit application. On completion of required modifications to facilities, the permit application will be returned with written confirmation that the concentrated animal operation is in compliance with these Rules.

(d) Methodology for Establishing a Potential for a Discharge as a Result of Any Rainfall Event Less Severe Than a 25-year, 24 Hour Event. The staff site evaluation shall include soil characteristics of the feedlot and of the land area lying between the feedlot and the receiving stream; slope and other topographic characteristics of the feedlot and the area between the feedlot, and the receiving stream; and the total drainage area. Using the results of the site evaluation,

the staff shall use either the "rational method for determination of runoff" or the "SCS method for determination of runoff" to establish whether a discharge occurs at rainfall events of less than the 24-hour, 25-year rainfall.

(e) Impact Evaluation. Utilizing the results of the site evaluation and the runoff evaluation required in Paragraph (d) of this Rule, the staff shall through mathematical modeling determine whether pollutants discharged as a result of rainfall runoff will cause a violation of water quality standards at flows in existence during the runoff period.

(f) Final Determination and Fact Sheet. Upon a final determination that a permit is not required, the staff shall prepare a fact sheet which delineates the reasons which have been established for requiring the permit, the corrective actions if any necessary to control the discharge of pollutants, and an implementation schedule for completing such actions.

If no corrective actions are required, the fact sheet shall specifically state that none are required and provide the justification for not requiring corrective actions. Upon completion of the fact sheet, the staff shall prepare an NPDES draft permit containing a description of needed corrective actions and a schedule for implementation and process the permit in accordance with Rule .0107 of this Section.

*History Note: Authority G.S. 143-213(24); 143-215; 143-215.1; 143-215.3(a)(1),(4);  
Eff. December 1, 1976;  
Amended Eff. March 1, 1993; October 1, 1987; December 1, 1984; June 7, 1981.*

#### **15A NCAC 02H .0124 RELIABILITY**

All facilities shall provide adequate reliability measures, which, in the opinion of the Director, will insure continued treatment and disinfection where the interruption of such treatment would render the waters unsafe for their best intended uses. The reliability measures shall include the following:

- (1) For new or hydraulically expanding facilities with mechanically operated components, and for any facility designated by the Director, multiple (dual at a minimum) components such as pumps, chemical feed systems, aeration equipment and disinfection equipment; and
- (2) At least one of the following:
  - (a) dual or standby power supply on site, or
  - (b) approval by the Director that the facility:
    - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
    - (ii) has sufficient storage capacity that no potential for overflow exists, or
    - (iii) can tolerate septic wastewater due to prolonged detention, and
    - (iv) would have de minimus impacts as a result of power failure, or
  - (c) a demonstration that the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source would not be needed or demonstrate other measures which provide comparable assurances that surface waters will not be impacted during power failures;
- (3) For new or hydraulically expanding mechanical facilities, the treatment plant must contain parallel units for components in the liquid line (screening, primary sedimentation, biological treatment units, chemical and physical treatment units, clarifiers, disinfection and effluent filters), unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (4) For mechanical facilities with a design capacity equal to or greater than 5.0 mgd, continuous operation, 24 hours, seven days per week, with each shift staffed by at least one certified wastewater operator shall be provided on or before October 1, 1993, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case; and
- (5) For facilities permitted under this Section, the permittee must designate an Operator in Responsible Charge and a back-up operator as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (6) In order to insure the proper operation and maintenance of facilities permitted under this Section, the Operator in Responsible Charge, or back-up operator when appropriate, must operate and visit the

- facility as required by the Water Pollution Control System Operators Certification Commission as established in 15A NCAC 8A .0202; and
- (7) Compliance with other reliability measures that, in the opinion of the Director, are necessary in a particular case.

*History Note:* Authority G.S. 143-214.1; 143-215.1(b); 143-215.3(a)(1);  
Eff. December 1, 1984;  
Amended Eff. March 1, 1993; October 1, 1987.

#### **15A NCAC 02H .0125 PERMIT REQUIREMENTS FOR PEAT MINING**

(a) Policy. Studies on peat mining in North Carolina have identified effects that could adversely impact the existing uses of the waters of the state. As there is no experience with peat mining in similar ecological systems, the effectiveness of proposed control and mitigation measures has not been demonstrated and must be estimated by using methods of analyses that are not well tested by experience. Many of the impacts of large-scale peat mining and subsequent reclamation may be irreversible and may not be realized until years or decades after peat mining is initiated. In addition, the estuarine/wetland systems have intricate interconnections which are not well understood at present and which are essential to the viability of the very valuable public estuarine resources. Recognizing the unknowns associated with peat mining, this Rule specifies procedures and requirements that are necessary to ensure compliance with the water quality standards and protection of the uses of the waters affected by peat mining operations. The water quality standards and uses of the waters shall be protected during all phases of a peat mining project, and the cumulative impacts of other peat mining or land uses shall be considered in the evaluation of each permit.

(b) Applicability. The requirements of this Rule are to be met during mining, reclamation, and, to the extent necessary to protect water quality standards, after reclamation for all peat mining operations that could contribute significant increases in pollution (including freshwater) into estuarine nursery areas, or any other area, identified by the Commission on a case-by-case basis when it is determined that potential exists for significant adverse effects on water quality and existing uses. Estuarine nursery areas are areas that function as important breeding or development grounds for estuarine or marine fishes, crustaceans or molluscs. These areas include:

- (1) all designated Primary Nursery Areas,
- (2) all designated Secondary Nursery Areas,
- (3) all anadromous fish spawning grounds and nursery areas identified in publications of the N.C. Division of Marine Fisheries, and
- (4) all other nursery areas designated or otherwise identified by the Marine Fisheries Commission, or the Wildlife Resources Commission.

(c) Drainage:

- (1) Canals draining peat mines shall not outlet directly into estuarine nursery areas and shall be directed towards appropriate freshwater bodies if possible.
- (2) If the drainage could contribute significant flow, directly or indirectly, into estuarine nursery areas or other areas determined by the Commission to require this protection, the project must be designed such that the total annual water released from the site would not exceed that expected from the site covered with mature natural vegetation. Mature natural vegetation is the assemblage of indigenous plants expected to occur on a proposed project site if it were allowed to develop undisturbed. This expectation may include periodic disturbance by fire at natural frequencies and intensities. Also, the peak flows from the site shall be controlled by the use of basins or other management techniques which moderate release rates so that flows do not exceed those expected from the site undrained and with mature natural vegetation. For purposes of this Rule, undrained is the state of the proposed project site without structures or features imposed by human agency intended to facilitate removal of surface or subsurface water. In modelling or other analysis required by this Rule, major canals existing at the time of rule adoption, at a density no greater than one per mile by one per 1/2 mile (or 320 acre blocks), may be allowed at the discretion of the Commission when it is determined that accurate evaluation of "undrained" conditions is not practicable. Water management systems must be designed to meet these criteria utilizing models or other quantitative methods in accordance with Paragraph (g) of this Rule and considering a wide range of rainfall conditions. The frequency-duration distribution for flows leaving the site during and after mining should as much as

possible match the distribution that would occur if the site were undrained and covered with mature natural vegetation.

- (3) An initial transition period may be allowed such that the entire permitted mining site comes into compliance with these limitations within four years. Reduction in runoff volumes must occur at a rate achieving constant yearly improvements as stipulated in the permit, and at no time exceed those expected under conditions existing at the time of permit issuance.

(d) Nutrients. The project shall be designed so that nutrient loadings discharged from the site are no greater than would occur if the site were covered with mature natural vegetation. An initial transition period may be allowed such that the entire permitted mining site comes into compliance within four years, and shows constant yearly improvements in nutrient loadings as outlined in the proposed project plan. However, in accordance with Rule .0404(c) of this Subchapter, more stringent conditions may be established for nutrient discharges to waters that are excessively eutrophic.

(e) Sediment. Best management practices, including settling basins on field ditches, should be utilized to control sediment in drainage waters. The levels of sediment discharged must be predicted for the different stages of the operation and evidence provided that these levels will not adversely affect the uses of the receiving waters. The deposition of windblown dust into both drainage and adjacent waters and the effects during and after fires must be included in this analysis. Details on the rate of sediment buildup and the frequency and procedures for removal in the various components for the water control system, including canals and settling basins, must be provided. Adequate sediment controls must be provided during maintenance and expansion of canals and water control structures.

(f) Other pollutants. The characteristics of the drainage water leaving the site must be described fully for all phases of the project. Any substances which may be discharged during some phase of the project must be evaluated as part of the application and adequately controlled to comply with the water quality standards and to protect the uses of the waters. Possible runoff or leachate from storage piles of peat, ash, or other substances on site must be included in this analysis. Adequate means of disposal of solid wastes must be assured and discussed in the application in order to assure reliable control of pollution from on-site storage piles.

(g) Quantitative methods of evaluation. The design and evaluation of proposed peat mining projects relies on predictive models to an unusual degree since there is no experience with large-scale peat mining or the effectiveness of pollution control measures in similar situations. Modelling or quantitative methods of analyses must, at a minimum, meet the following requirements:

- (1) All factors which may affect the quality or quantity of the discharge must be included in the design and evaluation of the water control system, including factors such as very large storm events, sequential storm events, fires, various land uses during different stages of the project, recharge or discharge to the groundwater, and construction, expansion, filling-in and maintenance of ditches, canals, settling basins, and impoundments;
- (2) The complete assumptions for each analysis or condition must be listed and possible errors and the effects of such errors, including interactions, must be evaluated for each assumption;
- (3) Situations under which the predictions would be inaccurate must be identified and evaluated;
- (4) Conditions under which the proposed water control system would fail to provide adequate controls must be evaluated, including mechanical failures, and descriptions of the storage and flow capacities of all system components along with the intensities and durations of storms which would be expected to exceed the capacity of the various components during each phase of the project. The impact of such failures on water quality and flows must be evaluated;
- (5) To provide maximum information about the operation of the proposed system under all conditions and to minimize the possibility of error or inapplicable assumptions, various methods of analyses should be utilized, including detailed models using historical rainfall data, as well as methods based on individual design storms and runoff coefficients.

(h) Wetland or swamp discharges. While wetlands and swamps are waters of the state and cannot be considered as part of a treatment and disposal system, their assimilative capacity and water storage capabilities may play a role in protecting the uses of downstream waters. For purposes of this Rule, wetlands are as defined in the federal NPDES regulations in 40 CFR 122.2, as existing on July 1, 1985. Copies may be obtained from the Director, Division of Environmental Management, Raleigh. Where available, determinations of wetland status by the U.S. Environmental Protection Agency or the U.S. Army Corps of Engineers may be used in making wetland evaluations. The Commission may also make determinations of wetland status in defining where water quality standards and uses must be protected. A discharge to a wetland or swamp must protect the uses of these waters. The water quality benefits of a wetland filter area should be estimated conservatively. Detailed information on the size, topography, soils, flows, water depths, channels, vegetation, wildlife resources, uses by wildlife and man, and other characteristics of a proposed filter area must be provided in order to demonstrate that the discharge will flow

in the desired direction, that sheet flow and water quality benefits will be maintained over the long-term, and that water quality and existing uses of the area will not be threatened. The effects of storms or high water levels on these benefits and characteristics must also be evaluated. A description of the means of diffusion to provide sheet flow is particularly important.

The terms wildlife and wildlife resources are used as defined in G.S. 113-129.

(i) Effects on groundwater. The impacts of the proposed project and water control system on groundwater must be fully evaluated and found to ensure compliance with Title 15A, Subchapter 2L, Classification and Water Quality Standards Applicable to the Groundwaters of North Carolina. Groundwater monitoring wells may be required to verify compliance with this requirement.

(j) Effects on adjacent landowners. The effects of the proposed project on water quality in adjacent lands and nearby wildlife refuges, parks, and other publicly owned lands, must be evaluated. Hydrologic and other alterations must not threaten the uses in nearby waters. A brief description of the project and summary of the expected impacts on water quality and uses must be sent to adjacent landowners and a copy attached to the permit application.

(k) Assurance of continued operation. As part of the permit application, legal mechanisms must be developed to assure continuous proper long-term use and operation and maintenance of water control systems during all times when permitted peat mining or reclamation activities are being carried out that could adversely impact the waters of the state and thereafter where no other acceptable options are available to protect water quality. These mechanisms must include paying for the costs of operating and maintaining the system. These assurances must be provided by current owners and will be required through all changes in ownership during this time. Assurances of implementation of these mechanisms prior to the initiation of mining activity shall be a condition of the permit.

(l) Abandonment. The consequences of abandonment of the drainage and water control systems must be fully described for each phase of the project and particularly after the reclamation plan is implemented. If the area of the project is abandoned at any time, the drainage discharges must come into compliance with the design requirements of this Rule within four years or on a schedule approved by the Commission such that pollution never exceeds levels existing at the start of the project. The analyses must verify that the mining bond and reclamation plan after the bond is released are both adequate to meet this condition. Further, it must be determined whether the mined area would flood, and if so, the depth of the water and points and rates of overflow must be described along with the impacts on adjacent lands and waters.

(m) Characteristics of treatment systems. If an impoundment lagoon, canal or ditch does not meet all of the characteristics listed in Subparagraphs (1) through (4) of this Paragraph, the water in the structure may be considered classified waters of the state. Standards are not required to be met in waste treatment systems. However, if public uses were established, such as fishing, the Commission may determine that continual protection of that use be achieved which could preclude some benefits desired as a waste treatment system. The characteristics of a treatment system are that the structure:

- (1) is manmade and is utilized primarily for water management and water pollution control;
- (2) is entirely on a single tract of privately owned land with the owner or owners controlling the inflows and outflows;
- (3) has controls at the outlet(s) so water may flow out, but under normal hydrological conditions not into the structure or facility through the outlet(s);
- (4) is not an integral part of the ecosystem of the receiving waters so that if the operation causing the pollution is discontinued, the structure or facility can be removed from use without adversely impacting the hydrology or water quality of the receiving waters.

(n) Identification of outlet points. Water in treatment systems need not meet the water quality standards nor maintain public uses. Waters downstream from an outlet point must be protected to meet the standards and public uses. Canals are generally classified waters of the state, either as named stream segments in the Schedule of Classifications or as unnamed tributaries.

The following factors can be used as guidance in determining the outlet point:

- (1) The outlet point must be entirely on the property of the permit applicant;
- (2) The outlet point must be selected so that the owner can block, obstruct, or open the outlet point:
  - (A) without removing any established uses of the waters including navigation, fishing, and wildlife, and
  - (B) without adversely affecting drainage by other landowners;
- (3) Once a point has been designated as an outlet, the receiving waters cannot be obstructed by any landowner without approval and a permit modification by the Commission;
- (4) Outlet designations may require declassifications.

(o) Application Information. The permit application must contain full information to evaluate and assure compliance with the requirements of this Rule, including maps, diagrams, calculations, assumptions, engineering specifications, and any proposed deed restrictions, easements, contracts or other legal means of assuring long-term compliance. Applications for all permits required by G.S. 143-215.1 for the project site, including permits for waste disposal for sanitary facilities, on-site

power plants, or energy conversion facilities, should be submitted together where possible in order to evaluate the full impacts of the proposed project.

*History Note:* Authority G.S. 143-214.1; 143-215(a); 143-215(b); 143-215.1; 143-215.3(a)(1);  
Eff. September 1, 1986.

### 15A NCAC 02H .0126 STORMWATER DISCHARGES

Stormwater picks up pollutants as it drains to waters of the State. When man alters stormwater drainage, the pollutants carried by stormwater to waters of the State may be concentrated or increased, resulting in water pollution. The juncture at which stormwater reaches waters of the State will either be a terminus of a pipe, ditch or other discrete outlet, or in a diffuse sheet flow manner. Stormwater discharges subject to NPDES permitting are addressed in this Section, which incorporates, supplements and expands the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in Sections dedicated to particular water classifications or circumstances. If there is an overlap, the more stringent requirements apply. NPDES permits for stormwater discharges to surface waters shall be issued in accordance with these Rules and United States Environmental Protection Agency 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>

- (1) For the purpose of this Rule, these terms shall be defined as follows:
  - (a) Department means the North Carolina Department of Environment and Natural Resources;
  - (b) Regulated public entities (RPE) means all municipalities and counties identified by a decennial U.S. Census as being located in whole or in part within an Urbanized Area, all federally designated public bodies, and all state designated public bodies;
  - (c) Municipal separate storm sewer system (MS4) pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
    - (i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
    - (ii) Designed or used for collecting or conveying stormwater;
    - (iii) Which is not a combined sewer; and
    - (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2;
  - (d) 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;
  - (e) Permitted by Rule means an entity is considered permitted pursuant to G.S. 143-215.1 and subject to judicial review pursuant G.S. 143-215.5. It shall not be necessary for the Department to issue separate permits, provided such entities comply with Item (11) of this Rule. Such entities shall be subject to enforcement remedies pursuant to G.S. 143-215.6A, 143-215.6B and 143-215.6C;
  - (f) 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 sum of the permanent and seasonal populations, or be calculated from a measure of housing unit density;
  - (g) Public body means the United States, the 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 statute or law;
  - (h) Redevelopment means any rebuilding activity other than a rebuilding activity that:

- (i) Results in no net increase in built-upon area; and
- (ii) Provides equal or greater stormwater control than the previous development;
- (i) Significant contributor of pollutants means an MS4 or a discharge that:
  - (i) Contributes to a pollutant loading(s) which may reasonably be expected to exert detrimental effects on the quality and uses of that water body; or
  - (ii) That destabilizes the physical structure of a water body such that the discharge may reasonably be expected to exert detrimental effects on 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;
- (j) Small municipal separate storm sewer system "small MS4" pursuant to 40 CFR 122.26(b)(16) means all separate storm sewers that are:
  - (i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; and
  - (ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 CFR 122.26(b), or designated under Sub-Item (2)(b) of this Rule.

This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings; and
- (k) 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.
- (2) Designation: Designation consists of an automatic federal designation of public entities as described by Sub-Item (2)(a) of this Rule and a two step state designation process as described by Sub-Item (2)(b) of this Rule. All regulated public entities shall comply with the permit application schedule set forth in Item (6) of this Rule.
  - (a) Federal designation. In accordance with 40 CFR 122.32, all small MS4s located in whole or in part within an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census must seek coverage under a NPDES permit for stormwater management.
  - (b) State designation process. The department shall identify additional public bodies that have the potential to discharge stormwater resulting in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including adverse habitat and biological impacts. As a first step, the public bodies shall be identified based on the categories listed at Sub-Item (2)(b)(i) of this Rule. Once a public body has been identified, the designation of that body, step two, as subject to the requirement to apply for permit coverage will be made based on the criteria at Sub-Item (2)(b)(ii) of this Rule.
    - (i) Step One: Identification of public bodies potentially subject to regulation.
      - (A) Municipality. A municipality, outside of an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census, will be identified as a potential regulated MS4 if:
        - (I) The population is greater than 10,000; and
        - (II) The population density is at least 1,000 people per square mile.
      - (B) County. A County, outside of an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census, will be identified as a potential regulated public body if the county municipal and non-municipal population (including permanent and seasonal population) is greater than 45,000 persons. The seasonal population will be determined from the most recent data available from local, state and/or federal sources.
      - (C) Other public bodies. A public body may be designated if:

- (I) They are a municipality located within a regulated county, and have not been designated under any other category; or
  - (II) They are a municipality and have not been designated under any other category; or
  - (III) They are a MS4 such as, but not limited to, state and federal facilities, universities, community colleges, local sewer districts, hospitals, military bases, and prisons.
- (ii) Step Two: Criteria for designation of public bodies. In making designations, the department will evaluate the public bodies identified per Sub-Item (2)(b)(i) of this Rule for designation using the following criteria:
  - (A) Whether the public body discharges or has the potential to discharge stormwater to sensitive waters, including:
    - (I) Waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 2B .0101(d) and (e);
    - (II) Waters which have been identified as providing 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
    - (III) 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); and
  - (B) Has exhibited high population growth or population growth potential, where:
    - (I) High growth shall be defined as 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; or
    - (II) An area having growth potential shall be defined as a jurisdictional area adjoining an area determined to have high growth in accordance with Sub-Item (2)(b)(ii)(B)(I) of this Rule or an area having a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years; and
  - (C) Whether the public body discharges are, or have the potential to be, a significant contributor of pollutants to waters of the United States.
- (3) State Designation Administration: Review and finalization of public body designation shall be handled under the following guidelines:
  - (a) The department will implement the designation process in accordance with the department schedule for Basinwide Plans starting January 01, 2004;
  - (b) The department shall publish a list of public bodies identified in accordance with Sub-Item (2)(b)(i) of this Rule. Lists shall be developed for a river basin area 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) All public bodies identified shall be notified in writing by the department prior to publication of the list in Sub-Item (3)(b) of this Rule;
  - (d) The department shall accept public comment on the application of the evaluation criteria in Sub-Item (2)(b)(ii) of this Rule for each of the identified public bodies. A public comment period of not less than 30 days will be provided;
  - (e) After review of the evaluation criteria in Sub-Item (2)(b)(ii) of this Rule and review of public comments received, the department will review the effectiveness of any existing water quality protection programs. The effectiveness will 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. The Department shall then make a final determination on designation for each of the listed public bodies; and

- (f) The department shall notify a public body of its designation for NPDES stormwater coverage in writing. This notification shall include the category under which the public body was designated, the basis(es) of the designation and the date on which the application for coverage shall be submitted to the Department.
- (4) Other State designations
  - (a) Total Maximum Daily Load (TMDL) MS4s. TMDL MS4s include public bodies 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.
  - (b) Designated by petition. Entities subject to a petition shall be designated by the department based on the process and procedures identified in Item (5) of this Rule.
- (5) Petitions
  - (a) In accordance with 40 CFR 122.26(f):
    - (i) Any operator of a MS4 may petition the department to require a separate NPDES stormwater permit for any discharge into the MS4; and
    - (ii) Any person may petition the department to require a NPDES stormwater permit for a discharge composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
  - (b) Petition Submittal. Petitions to designate a small MS4 or discharge for NPDES stormwater permit coverage must meet the following requirements:
    - (i) Petitions must be submitted on department approved forms;
    - (ii) A separate petition must be filed for each petitioned entity;
    - (iii) The petition must be complete prior to consideration by the department;
    - (iv) Petitions must demonstrate the need for NPDES stormwater permit coverage for the petitioned entity based on the following standards:
      - (A) For stormwater discharges to impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is the source of or a significant contributor of pollutants to the impairment;
      - (B) For stormwater discharges to non-impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is a significant contributor of pollutants to the receiving waters;
      - (C) Monitoring data must include, at a minimum, representative sampling of the stormwater discharges subject to the petition;
      - (D) The petitioner must present information documenting how the sampling may be considered representative of the stormwater discharges. The petitioner may present technical scientific literature to support the sampling methods; and
      - (E) The Petitioner shall notify the potential petitioned entity in advance of stormwater discharge monitoring activities.
    - (v) The petitioner must certify that a copy of the petition and any subsequent additional information submitted by the petitioner has been provided to the chief administrative officer of the petitioned entity within 48 hours of submitting said petition and additional information to the department;
    - (vi) Petitions must include the following to be eligible for consideration:
      - (A) Completed set of petition form(s);
      - (B) In accordance with Sub-Item (5)(b)(iv) of this Rule, a demonstration of the need for NPDES stormwater permit coverage. These data may be supplemented with technical study information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;
      - (C) Documentation of receiving waters impairment or degradation;
      - (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; and

- (E) Certification of petitioned entity notification;
  - (vii) On a case by case basis the department may request additional information necessary to evaluate the petition.
- (c) Petition Administration. All petitions received by the department will be processed under the following guidelines:
  - (i) The department will make a determination on the completeness of the petition and acknowledge receipt of the petition within 90 days of receipt. The petition is considered complete if the department does not notify the petitioner of receipt within 90 days.
  - (ii) Substantially incomplete petitions will be returned to the petitioner with guidance on what is needed to complete the petition package.
  - (iii) Pursuant to 40 CFR 122.26(f)(5), the department must make a final determination on any petition within 180 days of receipt. The 180-day period begins upon receipt of a complete petition application. The department will draft the designation decision pursuant to the applicable designation criteria from Sub-Item (2)(b)(ii) of this Rule.
  - (iv) The petition will be sent to public notice, which includes a public comment period of at least 30 days.
  - (v) The department may hold a public hearing on any petition and shall hold a public hearing if the department receives a written request for a public hearing on the petition within 15 days after the notice of the petition is published and the department determines that there is a significant public interest in holding such hearing. The hearing date will be no less than 15 days from the receipt of the request for public hearing.
  - (vi) Information on the petitioned entity will be accepted until the end of the public comment period and will be considered in making the final determination on the petition. New petitions for the same entity received during this time will become a party to the original petition.
  - (vii) New petitions for the same entity received after the public comment period ends and before the final determination is made will be considered incomplete and placed on administrative hold pending a final determination on the original petition.
    - (A) If the department designates the petitioned entity, any new petitions placed on administrative hold will be considered in the development of the NPDES permit.
    - (B) If the department makes the final determination that the petitioned entity should not be designated, new petitions for the previously petitioned entity must present new information or demonstrate that conditions have changed substantially in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.
  - (viii) If the final determination is that the petitioned entity shall be designated, then the department will notify the petitioned entity of its designation and will require a stormwater permit application. The application shall be required to be submitted no later than 18 months from the date of notification.
- (6) Application schedule. Regulated public entities must submit applications on department approved forms. Designated small MS4 applications shall include program descriptions for the minimum measures identified in Item (7) of this Rule. The application for regulated public entities that do not own or operate a small MS4 shall certify the lack of ownership or operation of a small MS4. Regulated public entities that do not own or operate a small MS4 may elect to implement a stormwater management program pursuant to the options available in this Rule.
  - (a) The application deadline will not be less than 18 months from the date of designation notification, except for:
    - (i) 1990 Decennial Census regulated public entities, which must apply by March 10, 2003;
    - (ii) Municipally operated industrial activities, which must apply by March 10, 2003.
  - (b) Regulated public entities that are newly identified based upon the 2000 Decennial Census, or a future decennial census, must apply for permit coverage within 18 months of State notification. The Department, within three months of federal verification of decennial census data, will notify in writing all the public entities identified.
- (7) Stormwater Management Requirements

- (a) All regulated public entities subject to this Rule shall develop, implement and enforce a stormwater management plan approved by the department in accordance with Sub-Items (7)(b)-(7)(e) of this Rule. The plan shall be designed to reduce discharge of pollutants to the maximum extent practicable and, except as otherwise provided, shall include but not be limited to the following minimum measures:
- (i) A public education and outreach program on the impacts of stormwater discharges on water bodies to inform citizens of how to reduce pollutants in stormwater runoff. The public body 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;
  - (ii) A public involvement and participation program consistent with all applicable state and local requirements;
  - (iii) A program to detect and eliminate illicit discharges within the MS4. The program shall include a storm sewer system mapping component which at a minimum identifies stormwater outfalls and the names and location of all waters within the jurisdiction of the public body;
  - (iv) A program to reduce pollutants in any stormwater runoff to the MS4 from construction activities resulting in a land disturbance of greater than or equal to one acre. Implementation and enforcement of the Sedimentation Pollution Control Act, G.S. 113A-50 et seq., By either the Department or through a local program developed pursuant to G.S. 113A-54(b), in conjunction with the states NPDES permit for construction activities, may be used to meet this minimum measure either in whole or in part;
  - (v) A program to address post-construction stormwater runoff from new development and redevelopment projects that cumulatively disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4 or into an interconnected MS4, pursuant to Item (10) of this Rule; and
  - (vi) A pollution prevention/good housekeeping program for municipal operations that addresses operation and maintenance, including a training component, to prevent or reduce pollutant runoff from those operations.
- (b) Minimum measures and permit coverage for regulated public entities:
- (i) For municipalities which own and operate a small MS4:
    - (A) They shall implement all six minimum measures; and
    - (B) Their permit will cover their jurisdictional area including any area where they have exercised their Extraterritorial Jurisdiction Authorities under G.S. 160A-360. They shall implement the six minimum measures in their ETJ areas to the extent allowable under existing rules and statutes.
  - (ii) For counties which own and operate one or more small MS4s:
    - (A) They shall implement all six minimum measures;
    - (B) The permit will cover the jurisdictional area of the small MS4(s). The county may elect to have the permit cover their entire jurisdictional area; and
    - (C) The county may elect to implement the six minimum measures throughout the remaining unincorporated areas of the county that drain in whole or in part to publicly owned MS4's using the "permitted by rule" option pursuant to Item (11) of this Rule. The county may also elect to cover all unincorporated areas of the county.
  - (iii) For regulated public entities that do not own or operate a small MS4
    - (A) They may apply for a permit to implement all six minimum measures; or
    - (B) They may apply to implement the post construction control and good housekeeping / pollution prevention minimum measure using the "permitted by rule" option pursuant to Item (11).
    - (C) The permit coverage areas would be as follows:
      - (I) For municipalities, their permit will cover their jurisdictional area including any area where they have exercised their Extraterritorial

- Jurisdiction Authorities under G.S. 160A-360. They shall implement the six minimum measures in their ETJ areas to the extent allowable under existing rules and statutes;
- (II) For counties, the permit would cover the unincorporated areas of the county that drain in whole or in part to publicly owned MS4's. The county may also elect to cover all unincorporated areas of the county; and
  - (III) For all other public bodies, the permit would cover their jurisdictional area.
- (c) All public bodies designated by petition shall meet the requirements set out in Sub-Item (7)(b) of this Rule as applicable.
  - (d) All public bodies designated by TMDL, pursuant to Item (4) of this Rule, shall meet the requirements as set out in Sub-Item (7)(b) of this Rule as applicable including, but not limited to additional requirements associated with the TMDL.
  - (e) The Department may allow regulated public entities to use existing state and local programs to meet the required permit minimum measures either in whole or in part.
  - (f) Within the jurisdictional area of all regulated public entities, the post construction controls pursuant to Item (10) of this Rule, shall be required and implemented where the construction activity drains in whole or in part to a publicly owned MS4.
- (8) Waiver. The department may waive the requirements set out in Item (7) of this Rule pursuant to 40 CFR 122.32(d) or 40 CFR 122.32(e).
  - (9) Implementation Schedule.
    - (a) Regulated public entities, pursuant to Item (2) of this Rule, shall have permit conditions that establish schedules for implementation of each component of the stormwater management program based on the submitted application, and shall fully implement a program meeting the requirements set out in Item (7) and Item (10) of this Rule within five years from permit issuance.
    - (b) Regulated public entities electing to be permitted by rule shall adopt ordinances and fully implement the required post-construction program meeting the applicable requirements set out in Item (7) and Item (10) of this Rule. They will thereafter report annually on the implementation of the ordinance(s). They shall fully implement the pollution prevention/good housekeeping measure at their publicly owned facilities within two years of notification of approval of their application for permitted by rule status.
  - (10) Post-construction stormwater management
    - (a) All regulated public entities, required to implement the post construction stormwater management minimum measure, must develop, implement and adopt by ordinance a post-construction stormwater management program for all new development and redevelopment as part of their plan to meet the minimum requirements pursuant to Sub-Item (7)(a)(v) of this Rule. These ordinances, and subsequent modifications, will be reviewed and approved by the Department prior to implementation. The approval process will establish subsequent timeframes when the Department will review performance under the ordinance (s). The reviews will occur, at a minimum, every five years. Regulated public entities without ordinance making powers, shall demonstrate similar actions taken in their post construction stormwater management program to meet the minimum measure requirements.
    - (b) The post-construction program shall apply to all new development projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale. The post-construction program shall apply to all redevelopment projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale.
    - (c) The department shall submit a model ordinance including best management practices to control and manage stormwater runoff from development and redevelopment sites subject to this Rule to the Commission for approval. The department shall work in cooperation with local governments to develop this model ordinance. The model ordinance shall include both structural and non-structural best management practices adequate to meet the minimum requirements of this Rule.
    - (d) The deadlines for implementation of the local post-construction program are as follows:
      - (i) 1990 Decennial Census federally designated small MS4's, March 10, 2005;

- (ii) 2000 Decennial Census and future decennial Census federally designated small MS4's, 12 months from date of permit issuance or 12 months from date of the granting of permit by rule status; and
  - (iii) All other regulated public entities, 12 months from date of permit issuance or 12 months from date of the granting of permit by rule status.
- (e) A post construction stormwater management program shall be developed and implemented that meets the following requirements:
- (i) The program shall require all projects as defined in Sub-Item (10)(B) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:
    - (A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:
      - (I) No more than two dwelling units per acre or 24 percent built-upon area BUA for all residential and non-residential development;
      - (II) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable;
      - (III) All BUA shall be at a minimum of 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 approximately 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a); and
      - (IV) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans;
    - (B) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (10)(e)(i)(A) of this Rule shall implement stormwater control measures that:
      - (I) Control and treat the difference in stormwater runoff volume leaving the project site between the pre and post development conditions for the one year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;
      - (II) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have an 85% average annual removal for Total Suspended Solids;
      - (III) General Engineering Design Criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c);
      - (IV) All BUA shall be at a minimum of 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 approximately 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a); and
      - (V) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans;

- (f) The program shall include an operation and maintenance component that ensures the adequate long-term operation of the structural BMP's required by the program. The program shall include a requirement that the owner of a permitted structural BMP, submit annually to the local program, a maintenance inspection report on each structural BMP. The inspection must be conducted by a qualified professional;
- (g) A program shall be developed to control, 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 should be coordinated with the local county health department;
- (h) For programs with development/redevelopment draining to SA waters, the following additional requirements must be incorporated into their program:
  - (i) A local ordinance shall be developed, adopted and implemented to ensure that the best practice for reducing fecal coliform loading is selected. The best practice shall be the practice that results in the highest degree of fecal die off and controls to the maximum extent practicable sources of fecal coliform while still meeting the requirements of Sub-Item (10)(d) of this Rule. The local ordinance(s) shall incorporate a program to control the sources of fecal coliform to the maximum extent practical, including:
    - (A) Implementation of a pet waste management program. Appropriate revisions to an existing litter ordinance can be used to meet this requirement; and
    - (B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department; and
  - (ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance system, or constructed system of conveyances that discharge to SA waters, shall not be allowed. Expansion is defined as an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the one year 24 hour storm. Overland sheetflow of stormwater or stormwater discharge to a wetland, vegetated buffer or other natural area capable of providing treatment or absorption will not be considered a direct point of stormwater discharge for the purposes of this Rule;
- (i) For programs with development/redevelopment draining to trout (Tr) waters, the following additional requirements must be incorporated into their program: A local ordinance shall be developed, adopted and implemented to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature, while still meeting the requirements of Sub-Item (10)(d) of this Rule;
- (j) For programs with development/redevelopment draining to Nutrient Sensitive waters, the following additional requirements must be incorporated into their program:
  - (i) A local ordinance shall be developed, adopted and implemented to ensure that the best management practice for reducing nutrient loading is selected while still meeting the requirements of Sub-Item (10)(d) of this Rule. Where a Department approved NSW Urban Stormwater Management Program is in place, the provisions of that program fulfill this requirement; and
  - (ii) A nutrient application (both inorganic fertilizer and organic nutrients) management program shall be developed and included in the stormwater management program;
- (k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of Item (10) of this Rule;
- (l) The department may require more stringent stormwater management measures on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters; and
- (m) The Department may develop guidance on the scientific and engineering standards for best management practices that shall be used to meet the post construction elements of this Rule. Alternative design criteria may be approved by the Department where a demonstration is made that the alternative design will provide:

- (i) Equal or better management of the stormwater;
  - (ii) Equal or better protection of the waters of the state; and
  - (iii) No increased potential for nuisance conditions.
- (11) Permitted by Rule Option. To be "permitted by rule" the public body shall:
- (a) Adopt ordinance(s) and implement programs addressing post-construction stormwater runoff throughout the public bodies entire jurisdictional area, pursuant to Item (10) of this Rule; and
  - (b) Institute the pollution prevention/good housekeeping measure at their publicly owned facilities, pursuant to Sub-Item (7)(a)(vi) of this Rule, in accordance with a separate NPDES permit for municipal operations.

If the public body selects this option, the State will implement the remaining four minimum measure requirements throughout the public bodies entire jurisdictional area through existing programs and NPDES stormwater permits to the extent allowed under those programs and permits.

*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.*

### **15A NCAC 02H .0127 GENERAL PERMITS**

(a) In accordance with the provisions of G.S. 143.215.1 (b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities shown in this Rule. All those dischargers in the State that received a "Certificate of Coverage" for that category from the Division will be deemed covered under that general permit. Each of the general permits will be issued individually under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other discharges that all: Involve the same or substantially similar operations; Have similar discharge characteristics; Require the same effluent limitations or operating conditions; Require the same or similar monitoring; and In the opinion of the Director are more appropriately controlled by a general permit such as:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities;
- (7) tourist gem mines;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) other discharges that meet the criteria in Paragraph (a) of this Rule.

(b) General permits will only be granted for discharge into waters classified either WS or SA following review and approval by the Division of Environmental Health, Department of Environment, Health, and Natural Resources.

(c) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(d) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using forms described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

- (e) General permits will be effective for a term not to exceed five years at the end of which the Division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits. Dischargers covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.
- (f) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.
- (g) Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.
- (h) Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.
- (i) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:
- (1) the discharge is a significant contributor of pollutants;
  - (2) conditions at the permitted site change, altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for coverage under a general permit;
  - (3) noncompliance with the general permit;
  - (4) noncompliance with Division Rules; or
  - (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
  - (6) effluent limitations are promulgated for the point sources covered by the general permit;
  - (7) a water quality management plan containing the requirements applicable to such point sources is approved after the issuance of the general permit;
  - (8) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.
- (j) Any interested person may petition the Director to take an action under Paragraph (i) of this Rule to require an individual NPDES permit.
- (k) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

*History Note:* Authority G.S. 143-215(1); 143-215.3(a)(1);  
Eff. October 1, 1987;  
Amended Eff. March 1, 1993; August 1, 1991; August 1, 1988.

<b>15A NCAC 02H .0128</b>	<b>GENERAL PERMIT FOR COOLING WATERS</b>
<b>15A NCAC 02H .0129</b>	<b>GENERAL PERMIT FOR MINE DEWATERING FACILITIES</b>
<b>15A NCAC 02H .0130</b>	<b>GENERAL PERMIT FOR WATER FILTRATION FACILITIES</b>
<b>15A NCAC 02H .0131</b>	<b>GENERAL PERMIT/SWIMMING POOL FILTER BACKWASH FACILITIES</b>
<b>15A NCAC 02H .0132</b>	<b>GENERAL PERMIT FOR SEAFOOD PACKING FACILITIES</b>
<b>15A NCAC 02H .0133</b>	<b>GENERAL PERMIT/OIL STORAGE FACILITIES DISC/WS-III WATERS</b>
<b>15A NCAC 02H .0134</b>	<b>GENERAL PERMIT OTHER THAN WS-I: WS-II: OR WS-III</b>
<b>15A NCAC 02H .0135</b>	<b>GENERAL PERMIT FOR SAND DREDGES</b>
<b>15A NCAC 02H .0136</b>	<b>GENERAL PERMIT FOR TROUT FARMS</b>
<b>15A NCAC 02H .0137</b>	<b>GENERAL PERMIT FOR AQUIFER RESTORATIONS</b>

*History Note:* Authority G.S. 143-215; 143-215(1); 143-215(3); 143-215.1; 143-215.3;  
Eff. October 1, 1987;  
Amended Eff. August 1, 1988;  
Repealed Eff. August 1, 1991.

**15A NCAC 02H .0138 AUTHORIZATION TO CONSTRUCT PERMITS**

(a) Required. After an NPDES permit has been issued by the Division of Environmental Management in accordance with this Section, construction of wastewater treatment facilities or additions thereto shall not begin until final plans and specifications have been submitted to and an Authorization to Construct has been issued to the permittee by the Division of Environmental Management. If an Authorization to Construct has not been applied for in accordance with the requirements of the NPDES permit during the term of the permit, the permit will be considered void upon expiration and future actions will be considered as a new application.

(b) Application.

- (1) Application for Authorizations to Construct must be made in triplicate on official forms completely filled out, where applicable, and fully executed. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization from the permittee.
- (2) Required sets of plans and specifications:
  - (A) regular projects -- five sets of detailed plans and specifications,
  - (B) federal and state grants/loan projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;
- (3) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project.
- (4) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available.
- (5) If a Sedimentation and Erosion Control Plan is required by the Division of Land Resources or their designee, documentation shall be provided verifying that the applicant has developed and submitted to the governing agency the required Plan.
- (6) A 110 volt power source and a potable water supply, equipped with backflow prevention, must be available at the treatment system to allow for maintenance, clean-up and sampling. In cases where this is not reasonable or economically achievable, an exception may be granted by the Water Quality Section Chief.
- (7) For those wastewater disposal facilities which have the potential to cause a contravention of groundwater standards, hydrogeologic information must be provided as specified in Rule 2H .0205 of this Subchapter.
- (8) A residuals management plan must be submitted for all wastewater treatment systems that generate residuals and must include the following:
  - (A) A detailed explanation as to how the residuals will be stabilized. In addition if the residuals are generated from a system treating sewage, the explanation must show that the stabilization process meets the Environmental Protection Agency's criteria for a Class B residual as defined in 40 CFR 503 or for a Process to Significantly Reduce Pathogens (PSRP) as defined in 40 CFR Part 257 Appendix II, hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 N. Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402-9325 at a cost of thirty six dollars (\$36.00).
  - (B) An evaluation of the residual storage requirements for the treatment facility. A minimum of 30 days storage will be required on all facilities, unless the applicant can demonstrate to the satisfaction of the Director that this requirement is unwarranted for a particular case. Storage shall be calculated based upon average sludge production rate and shall be process units that are separate from the treatment system, i.e., not the clarifiers or aeration basins. Additional storage may be required based upon the method of final disposal/utilization.
  - (C) No authorization to construct will be issued unless the application package includes a commitment from a DEM approved residual disposal/utilization site for the acceptance of

the residual and which demonstrates that the DEM approved site has adequate capacity to accept the residuals.

- (9) A construction sequence plan must be submitted with applications for an Authorization to Construct for modification of existing wastewater treatment facilities. The plan must outline the construction sequence to ensure continuous operation of the treatment system.
- (c) Fees for Authorization to Construct Permits
- (1) For every application for a new or modified construction permit, for facilities with a permitted flow of greater than 100,000 gallons per day, a nonrefundable application processing fee of two hundred dollars (\$200.00) must be submitted.
  - (2) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 100,000 gallons per day but greater than 1,000 gallons per day, a nonrefundable application processing fee of one hundred and fifty dollars (\$150.00) must be submitted.
  - (3) For every application for a new or modified construction permit, for facilities with a permitted flow of equal to or less than 1,000 gallons per day, a nonrefundable application processing fee of one hundred dollars (\$100.00) must be submitted.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987;  
Amended Eff. March 1, 1993; August 3, 1992.

#### **15A NCAC 02H .0139 MINIMUM DESIGN REQUIREMENTS**

All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and comply with the minimum design requirements specified in Rule 2H .0219 of this Subchapter. The plans and specifications must be stamped and sealed by a Professional Engineer licensed in North Carolina unless all three of the following conditions are met:

- (1) the plans and specifications are for domestic waste from a single family dwelling with flows of 1000 gallons per day or less, and
- (2) the plans and specifications are prepared by the homeowner, and contain complete information needed to evaluate the proposed facility, and
- (3) the effluent limitations are for secondary treatment.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987.

#### **15A NCAC 02H .0140 CERTIFICATION OF COMPLETION**

Prior to operation of any treatment works or disposal system permitted in accordance with this Section, a certification must be received from a professional engineer certifying that the treatment works or disposal system has been installed in accordance with the approved plans and specifications. For facilities with phased construction or where there is a need to operate certain equipment under actual operating conditions prior to certification, additional certification may be needed as follow-ups to the initial, pre-operation, certification. In cases where the treatment works or disposal system was designed by a homeowner rather than a professional engineer, either the permittee or a professional engineer must submit this certification.

*History Note:* Authority G.S. 143-215.1(c)(1);  
Eff. October 1, 1987.

#### **15A NCAC 02H .0141 OPERATIONAL AGREEMENTS**

Prior to issuance or reissuance of a permit pursuant to this Section for a wastewater facility as specified in G.S. 143-215.1(d1), the applicant must either provide evidence to show that the applicant has been designated as a public

utility by the State Utilities Commission or enter into a properly executed operational agreement with the Division of Environmental Management. The requirement for assurance of financial solvency will be made on a case by case determination.

*History Note:* Authority G.S. 143-215.1(d1);  
Eff. October 1, 1987.

**15A NCAC 02H .0142 USE/WASTEWATER TRTMT WORKS EMGCY MAIN: OPER/REPAIR FUND**

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the Director to correct the cause of such conditions.

(b) In this, the Director shall:

- (1) Ensure the fiscal integrity of the fund;
- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);
- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and
- (7) Provide a quarterly accounting of the fund to the Commission.

*History Note:* Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e);  
Eff. August 1, 1988.