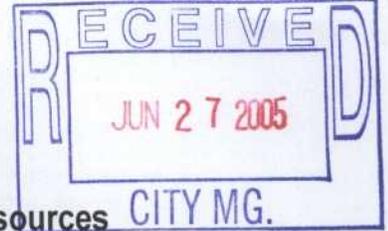




North Carolina Department of Environment and Natural Resources
Division of Water Quality



Michael F. Easley, Governor

William G. Ross, Jr., Secretary
Alan W. Klimek, P.E., Director

June 22, 2005

James L. Westbrook, Jr.
City Manager
70 Court Plaza
P.O. Box 7148
Asheville, North Carolina 28802

Subject: NPDES Permit Number NCS000435
Buncombe County, City of Asheville

Dear Mr. Westbrook;

In accordance with your application for a stormwater discharge permit received on March 10, 2003, and as amended, we are forwarding herewith the subject state - NPDES permit. This permit is issued pursuant to the requirements of North Carolina General Statute 143-215 .1 and the Memorandum of Agreement between North Carolina and the US Environmental Protection agency dated May 9, 1994 (or as subsequently amended).

Numerous comments were received during the public comment period. The attached document summarizes comments regarded by DWQ as the foremost and DWQ's response to those comments. You may review all the comments and response to comments at:

http://h2o.enr.state.nc.us/su/NPDES_Phase_II_Stormwater_Program.htm

Pursuant to Part II, Section A of the subject permit, Municipalities shall incorporate in their Stormwater Management Plan site-specific stormwater management requirements for streams supporting federally-listed threatened and endangered aquatic animal species required by site-specific management plans and schedules developed under provisions of 15A NCAC 2B .0110. Certain waters provide 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 and subsequent modifications. Maintenance and recovery of the water quality conditions, required to sustain and recover federally listed threatened and endangered aquatic animal species, contributes to the support and maintenance of a balanced and indigenous community of aquatic organisms and thereby protects the biological integrity of the waters."

As a result of comments received during the comment period, DWQ revised the TMDL language for communities that are or may be subject to TMDLs during the term of their permit. The revisions were editorial in nature and necessary to clarify the additional requirements a community would be subject to if 1) the permitted MS4 is or becomes subject to an approved TMDL, and 2) following notice of such by the Division.

If any parts contained in this permit are unacceptable to you, you have the right to an adjudicatory hearing upon written request within thirty (30) days following receipt of this letter. This request must be in the form of a written petition, conforming to Chapter 150B of the North Carolina General Statutes, and filed with the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, North Carolina 27611 -7447. Unless such demand is made, this decision shall be final and binding.

This permit does not affect the legal requirements to obtain other permits which may be required by the Division of Environmental Management or permits required by the Division of Land Resources, Coastal Area Management Act or any other State, Federal or Local governmental permit that may be required.

If you have any questions concerning this permit, please contact Mike Randall at telephone number 919/733-5083 ext. 545.

Sincerely,

Bradley Bennett

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Alan W. Klimek, P.E.

cc: Mike Mitchell, EPA Region IV
Central Files
Stormwater and General Permit Unit Files
DWQ Regional Office

NC MS4 PHASE II INDIVIDUAL PERMITS

RESPONSE TO COMMENTS

SUMMARY

Program Background

In 1972, the National Pollutant Discharge Elimination System (NPDES) program was established under the authority of the Clean Water Act. Phase I of the NPDES stormwater program was established in 1990. It required NPDES permit coverage for large or medium municipalities that had populations of 100,000 or more. In North Carolina, there are six Phase I communities. The Phase II program extends permit coverage to smaller (< 100,000 pop.) communities and public entities that own or operate a municipal separate storm sewer system (MS4).

Program Authority and Implementation

Phase II of the NPDES Stormwater program was signed into law in December 1999. This regulation builds upon the existing Phase I program by requiring smaller communities and public entities that own and operate an MS4 to apply and obtain an NPDES permit for stormwater discharges. The program was first implemented in the State by temporary rulemaking. During the process to make permanent rules, in early 2004, the Rules Review Commission rejected both the temporary rules and the permanent rules. In response to the legal issues surrounding Phase II implementation, Session Law 2004-163 now provides the Environmental Management Commission (EMC) the authority and guidelines for implementing the Phase II program in NC.

Who is designated for coverage in the Phase II program?

Federal law (40 CFR 122.32) requires communities and public entities that own or operate an MS4 located in an urbanized area obtain an NPDES Phase II stormwater permit:

What is required under a Phase II permit?

Permittees are required, at a minimum, to develop, implement, and enforce a stormwater program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable. The stormwater management program must include these six minimum control measures:

1. Public education and outreach on stormwater impacts
2. Public involvement/participation
3. Illicit discharge detection and elimination
4. Construction site stormwater runoff control
5. Post-construction stormwater management in new development and redevelopment
6. Pollution prevention/good housekeeping for municipal operations

Summary of Comments

Individual and general draft permits were developed for point source discharges of stormwater from small municipal separate storm sewer systems (MS4) discharging to the waters of North Carolina. Both the individual and general draft permits were made available for public comment in November, 2004. In addition, four public hearings were scheduled across the state to gather comments on the draft general permits.

Following public comment, DWQ considered each comment. Comments varied - several entities shared similar concerns, other comments were in response to specific provisions of particular permits.

With each permit DWQ is providing the following summary of the comments and our response to those comments that were of significance to the larger population of permittees.

Complete DWQ responses to comments, including editorial comments and a more details of selected comments on post construction and monitoring, is available at:

http://h2o.enr.state.nc.us/su/NPDES_Phase_II_Stormwater_Program.htm

or upon request to:

Mike Randall
Department of Environment and Natural Resources
Division of Water Quality
Stormwater Permitting Unit
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

Comments Regarding Lack of Authority

Comment

Numerous comments were submitted regarding lack of authority to allow for access to private property to conduct inspections. Also submitted, "language Part II (D) (2) (b)...suggest that the permittee must seek new authority to implement their program."

Response

The Division of Water Quality feels that the Phase II Communities have adequate authority to implement the minimum measures detailed in the individual permits.

According to Session law 2004-163 Section 2 (3), the Commission shall administer and enforce the standards for new development and redevelopment in the regulated coverage areas. To the extent that the new development or redevelopment is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Section 5 of the act.

The North Carolina General Statutes grant municipalities the power to inspect development. Specifically, Chapter 160A, Article 19 entitled "Planning and Regulation of Development" grants authority through Part 5 to set up an inspection department and appoint inspectors such as building inspectors, zoning inspectors or such other titles as may be generally descriptive of the duties assigned. See N.C.G.S. § 160A-411. The inspection department and the inspectors will enforce laws relating to, among other things, construction of buildings and other structures, the maintenance of buildings and other structures in a safe, sanitary and healthful condition and other matters that may be specified by the city council. In addition, a city's planning agency may take enforcement in order to carry out plans. See N.C.G.S. § 160A-316.

The North Carolina General Statutes also grant municipalities police powers that are used to protect the health, safety and welfare of the public. Cities have ordinance authority for pollution that can include inspections specific to environmental enforcement officers. See N.C.G.S. § 160A-185.

Because a city is likely to be adopting ordinances under either its planning or police powers, the city can add a requirement for illicit discharge and detection. The city may also condition approvals upon the right of entry and inspection.

In the Extraterritorial Jurisdiction (ETJ), any power that the city exercises within its boundaries, it may exercise in the ETJ. See N.C.G.S. § 160A-360(a). For areas where the city may want to work under a county's program, the county may also exercise the powers at the request of the city. See N.C.G.S. § 160A-360(d).

Fiscal Note

Comment

We request a fiscal note indicating costs to implement NPDES Phase II permits for NC communities similar in population to Carrboro.

Response

A fiscal note, indicating costs to implement NPDES Phase II permits for NC communities, prepared by the Division of Water Quality, is available at:

NPDES Phase II permits are federal permits issued in accordance with federal regulations and the Clean water Act. The US EPA previously compiled an economic analysis of the Phase II Rule. This document is references as Economic Analysis of the Final Phase II Stormwater Rule (EPA 833-R-99-002, October 1999).

North Carolina has developed a fiscal note associated with the Environment Management Commission's Phase II Stormwater rule making. This fiscal note relyed on the EPA analysis related the NPDES permit and looked at additional cost associated with the implementation of state rules that could potentially cover additional areas. The fiscal note is available at:

[http://h2o.enr.state.nc.us/su/NPDES Phase II Stormwater Program.htm](http://h2o.enr.state.nc.us/su/NPDES_Phase_II_Stormwater_Program.htm)

Part I: Permit Coverage

Comment

Numerous comments were submitted regarding, "Discharges authorized under this permit shall not cause or contribute to violations of water quality standards." Specifically the statement creates a NPDES permit condition that is contrary to the Maximum Extent Practicable standards set forth in the CWA.

Response

DWQ has revised the language to read, "The permit requires the development and proper implementation of the Stormwater Management Plan. The purpose of the Stormwater Management Plan is to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act. Implementation of best management practices consistent with the provisions of the Stormwater Management Plan constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. Successive iterations of the Stormwater Management Plan and other components of this permit will be driven by the objective of assuring that discharges do not cause or contribute to the violation of water quality standards, through the expansion and tailoring of management measures within the scope of the Stormwater Management Plan."

Comments

Part II, Section A, Paragraph 11, establishes procedures when a Total Maximum Daily Load (TMDL) is approved for impaired streams. First we suggest that DWQ reconsider the TMDL requirement in the stormwater permit at this time. The permit requires cities to identify all known outfalls discharging pollutants of concern to the impaired stream or a tributary to the impaired stream. It does not specify only outfalls within the MS4 jurisdiction. It seems to imply that we must identify all outfalls regardless of whether it lies within our jurisdiction or not. We do not have authority to identify outfalls outside of our jurisdiction and believe this requirement should be limited to those outfalls within our jurisdiction. The implementing statute (SB 1210) does not require designation as a TMDL implementation plan until an entity is specifically identified as a source of "pollutants for urban stormwater".

As a general comment, the above process may be appropriate in some cases, but may not be suitable for all TMDLs. Formal implementation planning may be required for some TMDLs, and these should not be implemented under this provision.

Part I, Permit Coverage indicates that the permit "covers activities associated with the discharge of stormwater from the MS4 ..." The paragraph above requires the permittee to identify any stormwater outfall.

North Carolina may be unique in the nation in that many cities own and operate only the stormwater system that is on public property or within street rights-of-way. In many cases, the

MS4 may subsequently discharge through a privately owned stormwater system, and the associated outfall may be one that the permittee does not own and operate. The Division must develop a strategy for addressing these differences.

This language appears to establish a new program implementation goal beyond the six minimum measures required by federal rule.

Based on the EPA issued interpretive guidance for TMDL's dated August 1997, "reasonable assurances" for achieving predominately non-point source load allocations may be sought using incentive-based, non-regulatory or regulatory approaches...the primary implementation mechanism may include the state, territory, or tribes Section 319 non-point source management program coupled with state, local or federal land management programs. It is The City's opinion that the TMDL monitoring plan requirement can and should be sought by DWQ through non-regulatory cooperative approaches, and not through NPDES permit requirements.

Response

If the permitted MS4 becomes subject to an approved TMDL, and following notice of such by the Division, the permittee shall implement a TMDL Water Quality Recovery Program. The following additional requirements apply.

- (a) Within two years after receiving the Division's notice that the permittee is subject to a TMDL, the permittee shall establish a TMDL Water Quality Recovery Program and shall identify the locations of all currently known MS4 outfalls within its jurisdictional area with the potential of discharging the pollutant(s) of concern: to the impaired segments, to their tributaries, and to segments and tributaries within the watershed contributing to the impaired segments. The permittee shall also develop a schedule to discover and locate all other MS4 outfalls within its jurisdictional area that may be discharging the pollutant(s) of concern: to the impaired stream segments, to their tributaries, and to segments and tributaries within the watershed contributing to the impaired segments.
- (b) Within two years after receiving the Division's notice that the permittee is subject to a TMDL, the permittee shall develop a monitoring plan for each pollutant of concern. The monitoring plan shall include the sample location by verbal description and latitude and longitude coordinates, sample type, frequency, any seasonal considerations, and a monitoring implementation schedule for each pollutant of concern. Where appropriate, the permittee may reduce the monitoring burden by proposing to monitor outfalls that the Division would consider substantially similar to other outfalls. The permittee may also propose in-stream monitoring where it would complement the overall monitoring plan. The monitoring plan shall be adjusted as additional outfalls are identified in accordance with the schedule required in (a) above and as accumulating data may suggest.
- (c) The permittee shall include the location of all currently known MS4 outfalls with the potential of discharging the pollutant(s) of concern, the schedule for discovering and locating currently unknown MS4 outfalls with the potential of discharging the pollutant(s) of concern, and the monitoring plan, (all as required in (a) and (b) above, and

all part of the TMDL Water Quality Recovery Program) in the first Stormwater Management Plan annual report due no earlier than two years after the Division's initial notification of the applicability of a TMDL.

- (d) The next and each subsequent Stormwater Management Plan annual report shall include an assessment of the available data for each pollutant of concern, and an assessment of the effectiveness of the BMPs employed, to determine what, if any, additional BMP measures may be necessary to return the impaired segments to compliance with state water quality standards. The permittee shall implement appropriate BMPs to control the pollutant(s) of concern to the maximum extent practicable. Implementation of the appropriate best management practices constitutes compliance with the standard of reducing pollutants to the maximum extent practicable.
- (e) Following any review and comment by the Division on the TMDL Water Quality Recovery Program, the permittee shall incorporate any necessary changes into the program. The permittee shall incorporate the revised TMDL Water Quality Recovery Program into the Stormwater Management Plan.

The permittee can identify the impaired stream segments in the MS4 jurisdictional area by referencing the 2004 Integrated 305(b) and 303(d) Report (or current version), available on the website of the Division of Water Quality Modeling and TMDL Unit.

Part II Section E: Construction Site Runoff Controls

Comment

Several comments were submitted regarding public entities that currently have an approved NCDENR Division of Land Resources Erosion and Sediment Control Program.

Response

Under 40 CFR Section 122.35 (a), the Phase II permittee has the option of relying on other entities already performing one or more of the minimum control measures, provided that the existing control measure, or component thereof, is at least as stringent as the Phase II rule requirements. In such a case, the permittee would not need to implement the particular measure, but would still be ultimately responsible for its effective implementation. For this reason, the permittee should enter into a legally binding agreement with the other entity. If the permittee chooses to rely on another entity, they must note this in their permit application and subsequent reports. A Phase II permittee may even rely on another governmental entity regulated under the NPDES storm water program to satisfy all of the permittee's permit obligations.

The permittee may rely on the NCDENR Division of Land Resources (DLR) Erosion and Sediment Control Program, either as administered by the DLR, or as delegated by the Sedimentation Control Commission (SCC) to another entity with appropriate jurisdiction. The permittee may rely on the DLR program only to the extent that that program satisfies all of the following BMPs:

- Construction site operators to implement erosion and sediment control BMPs and to control construction site wastes that may cause adverse water quality impacts.
- Educational and training materials are provided for construction site operators.
- Procedures are established for construction plan reviews that incorporate water quality considerations.
- Procedures are established and publicized for receipt and consideration of erosion and sedimentation information submitted by the public. The procedures must lead directly to a site inspection or other timely follow-up action.
- Procedures are established for site inspection and enforcement of control measure requirements

Where the permittee relies on a local government (county) to comply with the Construction Site Runoff Control the minimum measures will be modified by the following:

- The permittee shall conduct random inspections of local land disturbing activities that have a sediment and erosion control permit, issued by local government, to see if the site is in compliance.
- The permittee will monitor the local government program for effectiveness in the permittee jurisdiction.
- Sites that are not in compliance with their sediment and erosion control permits will be reported to the local government.

- Follow-up action by that local government will be monitored.
- The permittee will maintain a record of findings and follow-up procedures.

The permittee must provide and promote a means for the public to notify the appropriate authorities of observed erosion and sedimentation problems. The permittee may implement a plan promoting the existence of the NCDENR, Division of Land Resources "Stop Mud" hotline to meet the requirements of this paragraph.

Where permittee relies on the NCDENR Division of Land Resources (DLR) Erosion and Sediment Control Program to comply with this minimum measure the NCDENR Division of Land Resources Erosion and Sediment Control Program effectively meets the requirements of the Construction Site Runoff Controls by permitting and controlling development activities disturbing one or more acres of land surface and those activities less than one acre that are part of a larger common plan of development. This program is authorized under the Sediment pollution Control Act of 1973 and Chapter 4 of Title 15A of the North Carolina Administrative Code. This program includes procedures for public input, sanctions to ensure compliance, requirements for construction site operators to implement appropriate erosion and sediment control practices, review of site plans which incorporates consideration of potential water quality impacts, and procedures for site inspection and enforcement of control measures.

NCDENR Division of Water Quality NPDES general permit for construction activities (NCG010000), specifically Par I, Section A, Paragraphs 3, 4, 5, and 6, effectively meets the above requirements. The NCG010000 permit establishes requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

The permittee must provide and promote a means for the public to notify the appropriate authorities of observed erosion and sedimentation problems. The permittee may implement a plan promoting the existence of the NCDENR, Division of Land Resources "Stop Mud" hotline to meet the requirements of this paragraph.

The permittee may pursue local government implementation of the Erosion and Sediment Control Program by requesting a "minor modification" to the permit.

Part II Section F: Post-Construction Site Runoff Controls

Please note that the specific comments regarding Post-Construction were lengthy and a more detailed summary of those comments are provided in Attachment A of the Complete Response to Comments Document.

Comment

The draft permit does not protect water quality and cannot authorize discharges to any water without violating the Clean Water Act...

Response

The Division of Water Quality designed the Phase II Stormwater Permits to provide the owner or operator of small municipal separate storm sewer systems (MS4) local flexibility in selecting BMPs to meet permit requirements including impaired water needing restoration, waters known to be impaired by stormwater now or waters meriting additional protection due to sensitive natural resources. Under the authority of Section 402(p) of the Clean Water Act and implementing regulations 40 CFR Part 122, 123 and 124, North Carolina General Statutes 143-215.1 and Session Law 2004-163 and in accordance with the approved Stormwater Plan, all provisions contained and referenced in the Stormwater Plan are enforceable parts of this permit. The permittee will develop and implement its approved Stormwater Plan in accordance with Section 402(p)(3)(B) of the Clean Water Act, provisions outlined by the Director, and the provisions of this permit.

The permittee's Stormwater Plan will be implemented and managed such that the discharge of pollutants from the MS4 is reduced to the maximum extent practicable. It is anticipated that in order to meet this provision, implementation of the Stormwater Plan will occur with emphasis given to priority areas and to management measures and programs that are most effective and efficient at varying stages of the plan's implementation.

Permitted MS4s, subject to an approved TMDL, shall identify any stormwater outfalls that have the potential of discharging the pollutant(s) of concern either to the impaired stream segment or to a tributary of that stream segment and submit a monitoring plan for the pollutant(s) of concern to the Division. Monitoring results will be used in determining whether additional BMPs are needed to control the pollutant(s) of concern to the maximum extent practicable. If additional BMPs are needed to achieve the required level of control, the permittee will be required to submit a timetable for incorporation of those BMPs into the permitted stormwater program.

Comment

Regarding comments on vested rights

Response

Session Law 2004-163 shall not be construed to affect any vested right to development under any provision of statutory or common law. To the extent that post-construction measures are implemented by a zoning ordinance, vested rights shall be determined as provided in G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of statutory and common law. To the extent that post-construction measures are implemented by means other than a zoning ordinance, vested rights shall be determined as provided by applicable statutory and common law. The Commission, the Department, local governments, and other public entities shall implement this act in compliance with the applicable vested rights provisions of statutory and common law.

Comment

Existing stormwater programs are deemed compliant with Phase II post-construction measures, this violates the directive of Session Law 2004-163.

Response

Those areas, outside the 20 coastal counties, within the jurisdictional area of the permittee that are already subject to the existing state stormwater management programs are deemed compliant with the post-construction stormwater management model practices. For those areas within the jurisdictional area of the permittee that are not subject to the post-construction stormwater management provisions of another existing state stormwater management program, the permittee's Post-construction Stormwater Management Program must equal or exceed the stormwater management and water quality protection provided by the model practices. Public bodies may also develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements for post-construction stormwater management.

Comment

Regarding comments for the potential to adversely affect federally-listed threatened and endangered species.

Response

For those public entities that have the potential to adversely affect federally-listed threatened and endangered species, the permit language in Part II Section A shall include the following language, "Municipalities shall incorporate in their Stormwater Management Plan site-specific stormwater management requirements for streams supporting federally-listed threatened and endangered aquatic animal species required by site-specific management plans and schedules developed under provisions of 15A NCAC 2B .0110. Certain waters provide 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 and subsequent modifications. Maintenance and recovery of the water quality conditions, required to sustain and recover federally listed threatened and endangered aquatic animal species, contributes to the support and maintenance of a balanced and indigenous community of aquatic organisms and thereby protects the biological integrity of the waters.”

Municipalities will also be incorporating in their Stormwater Management Plan site-specific stormwater management best management practices under the six minimum measures that will collectively address impacts from stormwater runoff for streams supporting federally-listed threatened and endangered aquatic animal species.

Comment

Part II (F) (2) (d) establishes criteria to identify cluster development conditions on low density projects at the time of plan review. Require that concentrated development areas be located in upland areas and away from surface waters and drainage ways to the maximum extent practicable. Require areas other than built-upon areas within the project remain in vegetated or natural state, and that a maintenance agreement for the vegetated or natural area be filed with the property deed. Require that built-upon areas, by design and location, minimize runoff impact on the receiving waters, minimize concentrated flows, maximize the use of sheet flow through vegetated areas, and maximize the length of flow through vegetated areas. “Require that undeveloped areas...” – Some developments need improved, not impervious, recreational areas that will not be left in their natural state. Property deed – Please show where the State can require natural areas to be documented in the property deed.

Response

In addition to Session Law 2004-163, the authority to require natural areas to be documented in the property deed comes from existing rules and statutes. Session Law 2004-163 requires new development and redevelopment to comply with the standards set forth in the Stormwater Management Rule and, more specifically, requires post-construction measures to meet or exceed the model practices set out in the Stormwater Management Rule. Subsection (e) of the Stormwater Management Rule states, "The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans." See Stormwater Management Rule, subsections (e)(i)(A)(IV) and (B)(V).

Comment

Several communities indicated that there is no nutrient sensitive water stormwater management plan for the White Oak/New River Basin and therefore the City of Jacksonville has no experience or knowledge of what this entails. What is expected beyond public education and insuring awareness?

Response

At a minimum the community must:

1. Develop a local ordinance to ensure that the best management practice for reducing nutrient loading is selected and used for all development/redevelopment activities disturbing one or more acres of land surface and those activities less than one acre that are part of a larger common plan of development, and
2. Develop and implement a nutrient application (both inorganic fertilizer and organic nutrients) management program.

The Division of Water Quality will advise and consult with communities in developing a local ordinance and a nutrient application management program based in part on programs for the Tar-Pamlico and Neuse River Basins.

Where NSW programs are currently in affect, existing minimum measures will be enforced.

Part II (F) (2) (f)

Comment

Wilmington Permit No. NCS000406, Part II (F) (2) (f) "For projects within ½ mile of..." – What about existing developed areas with flooding problems that were permitted under State storm water requirements? What is the definition of the word "projects"? "...best practice for reducing fecal coliform loading is selected" – has the State established guidelines on this yet?

Response

DWQ anticipates that the best management practices for reducing fecal coliform will be addressed in BMP manual.

MONITORING

Please note that the specific comments regarding monitoring were lengthy and a more detailed summary of those comments are provided in Attachment A of the Complete Response to Comments document.

Comment

There is no mention in any written or published guidance of any quantitative water quality monitoring requirement by Phase II communities during the first permit term. It has been further clarified by DWQ through public meetings and phone conversations that no quantitative water quality monitoring programs would be required during the first permit term. Specific monitoring requirements are also listed or implied under Part IV (3) and Part V, Section C items 1, 2, and 3. The city request that reference to this language be removed from the final draft permits for Phase II communities.

Response

Even though not specifically mandated in the rule, monitoring may be performed by the permittee to implement provisions of the Stormwater Plan as appropriate to assess the performance of the various management measures that are a part of the Stormwater Plan. Opportunities for members of the public to participate in program development and implementation include participating in volunteer monitoring efforts. Monitoring and sampling conducted for or on behalf of the permittee should be reported if useful in further developing or accessing the Stormwater Plan. Under the illicit discharge detection and elimination, the permittee must develop, implement and enforce a program to detect and eliminate illicit discharges into the MS4. Even though not specifically mandated in the permit, monitoring may very well be an integral part of developing and enforcing the illicit discharge detection and elimination program.

Implementation of best management practices consistent with the provisions of the storm water management program constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." While monitoring is not required under the rule, the NPDES permitting authority has the discretion to require monitoring if deemed necessary.

Permitted MS4s, subject to an approved TMDL, shall submit a monitoring plan for the pollutant(s) of concern to the Division. The monitoring results will be used in determining whether additional BMPs are needed to control the pollutant(s) of concern to the maximum extent practicable.

Part VII, addresses the "administering and compliance monitoring fee" paid to the state as "Permit Fee."

DWQ did make minor revisions to the existing language for clarification.

PART V Standard Conditions

Comment

Clemmons Permit NCS000410, Part V.A.3, Civil and Criminal Liability: Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, even though the responsibility for effective compliance may be temporarily suspended.... request DWQ remove responsibility for consequential damages.

Response

The permittee is responsible for consequential damages.

**STATE of NORTH CAROLINA
DEPARTMENT of ENVIRONMENT and NATURAL RESOURCES
DIVISION of WATER QUALITY**

**DRAFT PERMIT NO. NCS000435
TO DISCHARGE STORMWATER UNDER THE**

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended,

City of Asheville

is hereby authorized to discharge stormwater from their municipal separate storm sewer system located:

within the City of Asheville Jurisdictional Area
Buncombe County

to receiving waters, French Broad River and its unnamed tributaries, Unnamed tributaries of Lake Julian, Ducker Creek and its unnamed tributaries, Clayton Creek, Boring Mill Branch and its unnamed tributaries, Dellwood Lake, Dingle Creek and its unnamed tributaries, Fourmile Branch and its unnamed tributaries, Gashes Creek and its unnamed tributaries, Haw Creek and its unnamed tributaries, Ross Creek/Lake Kenilworth and its unnamed tributaries, Sweeten Creek and its unnamed tributaries, Smith Mill Creek and its unnamed tributaries, McKinnish Branch and its unnamed tributaries, Emma Branch and its unnamed tributaries, Reed Creek and its unnamed tributaries, Smith Creek and its unnamed tributaries, Beaverdam Creek and its unnamed tributaries, Linn Cove Creek, Wolf Cove, Rice Branch, Carter Cove and its unnamed tributaries, Spooks Branch and its unnamed tributaries, Killian Branch and its unnamed tributaries, an unnamed tributary to Lee Creek, and unnamed tributaries to Herron Cove Branch, within the French Broad River basin in accordance with the discharge limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, IV, V, VI, VII and VIII hereof.

This permit shall become effective July 1, 2005.

This permit and the authorization to discharge shall expire at midnight on June 30, 2010.

Signed this day June 22, 2005.

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Bradley Bennett

Alan W. Klimek, P.E., Director

Division of Water Quality

By the Authority of the Environmental Management Commission

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- PART VIII** DEFINITIONS

PART I PERMIT COVERAGE

1. During the period beginning on the effective date of the permit and lasting until expiration, the city of Asheville is authorized to discharge stormwater from the municipal separate storm sewer system (MS4) to receiving waters, French Broad River and its unnamed tributaries, Unnamed tributaries of Lake Julian, Ducker Creek and its unnamed tributaries, Clayton Creek, Boring Mill Branch and its unnamed tributaries, Dellwood Lake, Dingle Creek and its unnamed tributaries, Fourmile Branch and its unnamed tributaries, Gashes Creek and its unnamed tributaries, Haw Creek and its unnamed tributaries, Ross Creek/Lake Kenilworth and its unnamed tributaries, Sweeten Creek and its unnamed tributaries, Smith Mill Creek and its unnamed tributaries, McKinnish Branch and its unnamed tributaries, Emma Branch and its unnamed tributaries, Reed Creek and its unnamed tributaries, Smith Creek and its unnamed tributaries, Beaverdam Creek and its unnamed tributaries, LinnCove Creek, Wolf Cove, Rice Branch, Carter Cove and its unnamed tributaries, Spooks Branch and its unnamed tributaries, Killian Branch and its unnamed tributaries, an unnamed tributary to Lee Creek, and unnamed tributaries to Herron Cove Branch, within the French Broad River basin. Such discharge will be controlled, limited and monitored in accordance with the permittee's Comprehensive Stormwater Management Program Report, herein referred to as the Stormwater Plan. The Stormwater Plan includes components of the permittee's Phase II Municipal NPDES Stormwater Permit Application, NPDES Stormwater Permit Application Comprehensive Stormwater Management Program Report and any approved modifications.
2. All discharges authorized herein shall be adequately managed in accordance with the terms and conditions of this permit. Any other point source discharge to surface waters of the state is prohibited unless it is an allowable non-stormwater discharge or is covered by another permit, authorization, or approval.
3. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree.
4. This permit covers activities associated with the discharge of stormwater from the MS4 within the jurisdictional area of the permittee as described in the approved local Stormwater Plan to control potential pollution from the MS4. The permit applies to current and future jurisdictional areas of the permittee, as well as areas that seek coverage under this permit through inter-local or other similar agreements with permittee. Agreements for coverage under this permit must be approved by the Division of Water Quality, herein referred to as the Division.
5. The Division may deny or revoke coverage under this permit for separate entities and require independent permit coverage as deemed necessary. In addition, the permittee may petition the Division to revoke or deny coverage under this permit for specific entities.
6. Under the authority of Section 402(p) of the Clean Water Act and implementing regulations 40 CFR Part 122, 123 and 124, North Carolina General Statutes 143-215.1 and Session Law 2004-163 and in accordance with the approved Stormwater Plan, all

provisions contained and referenced in the Stormwater Plan are enforceable parts of this permit. The permittee will develop and implement its approved Stormwater Plan in accordance with Section 402(p)(3)(B) of the Clean Water Act, provisions outlined by the Director, and the provisions of this permit.

7. The permit requires the development and proper implementation of the Stormwater Management Plan. The purpose of the Stormwater Management Plan is to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act. Implementation of best management practices consistent with the provisions of the Stormwater Management Plan constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. Successive iterations of the Stormwater Management Plan and other components of this permit will be driven by the objective of assuring that discharges do not cause or contribute to the violation of water quality standards, through the expansion and tailoring of management measures within the scope of the Stormwater Management Plan.
8. The permit authorizes the point source discharge of stormwater runoff from the MS4. In addition, discharges of non-stormwater are also authorized through the MS4 of the permittee if such discharges are:
 - (a) Permitted by, and in compliance with, another NPDES discharge permit including discharges of process and non-process wastewater, and stormwater associated with industrial activity; or
 - (b) Determined to be incidental non-stormwater flows that do not significantly impact water quality and may include:
 - water line flushing;
 - landscape irrigation;
 - diverted stream flows;
 - rising groundwaters;
 - uncontaminated groundwater infiltration;
 - uncontaminated pumped groundwater;
 - discharges from potable water sources;
 - foundation drains;
 - air conditioning condensate (commercial/residential);
 - irrigation waters (does not include reclaimed water as described in 15A NCAC 2H .0200);
 - springs;
 - water from crawl space pumps;
 - footing drains;
 - lawn watering;
 - residential and charity car washing;
 - flows from riparian habitats and wetlands;
 - dechlorinated swimming pool discharges;
 - street wash water;

- flows from emergency fire fighting.

The Division may require that non-stormwater flows of this type be controlled by the permittee's Stormwater Plan.

PART II FINAL LIMITATIONS AND CONTROLS FOR PERMITTED DISCHARGES

SECTION A: PROGRAM IMPLEMENTATION

The permittee will implement, manage and oversee all provisions of its Stormwater Plan to reduce pollutants discharged from the MS4. This includes, but is not limited to, the following areas:

1. The permittee will develop and maintain adequate legal mechanism, such as regulations, ordinances, policies and procedures to implement all provisions of the Stormwater Plan. The permittee will keep the Division advised of the status of development of appropriate ordinances and legal authorities and will pursue these authorities in accordance with the schedule outlined in the Stormwater Plan
2. The permittee's Stormwater Plan will be implemented and managed such that the discharge of pollutants from the MS4 is reduced to the maximum extent practicable. It is anticipated that in order to meet this provision, implementation of the Stormwater Plan will occur with emphasis given to priority areas and to management measures and programs that are most effective and efficient at varying stages of the plan's implementation.
3. The permittee will implement the components of the Stormwater Plan to prohibit, to the maximum extent practicable, illicit connections, spills and illegal dumping into the MS4.
4. The permittee will implement provisions of the Stormwater Plan as appropriate to monitor and assess the performance of the various management measures that are a part of the Stormwater Plan. This will include the provisions of this permit.
5. The permittee will maintain adequate funding and staffing to implement and manage the provisions of the Stormwater Plan.
6. The permittee will implement appropriate education, training, outreach, and public involvement programs to support the objectives of this stormwater discharge permit and the Stormwater Plan.
7. The permittee will implement a program to reduce pollution from construction site runoff as described in the Stormwater Plan and in accordance with this permit.
8. The permittee will implement a post-construction site runoff control program to regulate new development and redevelopment by requiring structural and non-structural best management practices to protect water quality, to reduce pollutant loading, and to minimize post-development impacts. This program will include provisions for long-term operation and maintenance of BMPs.
9. The permittee will evaluate municipal operations and develop and implement an appropriate program for municipal activities and ongoing operation and maintenance of municipal facilities to reduce the potential for stormwater pollution.

10. Proposed permit modifications must be submitted to the Director for approval.
11. If the permitted MS4 becomes subject to an approved TMDL, and following notice of such by the Division, the permittee shall implement a TMDL Water Quality Recovery Program. The following additional requirements apply.
 - (a) Within two years after receiving the Division's notice that the permittee is subject to a TMDL, the permittee shall establish a TMDL Water Quality Recovery Program and shall identify the locations of all currently known MS4 outfalls within its jurisdictional area with the potential of discharging the pollutant(s) of concern: to the impaired segments, to their tributaries, and to segments and tributaries within the watershed contributing to the impaired segments. The permittee shall also develop a schedule to discover and locate all other MS4 outfalls within its jurisdictional area that may be discharging the pollutant(s) of concern: to the impaired stream segments, to their tributaries, and to segments and tributaries within the watershed contributing to the impaired segments.
 - (b) Within two years after receiving the Division's notice that the permittee is subject to a TMDL, the permittee shall develop a monitoring plan for each pollutant of concern. The monitoring plan shall include the sample location by verbal description and latitude and longitude coordinates, sample type, frequency, any seasonal considerations, and a monitoring implementation schedule for each pollutant of concern. Where appropriate, the permittee may reduce the monitoring burden by proposing to monitor outfalls that the Division would consider substantially similar to other outfalls. The permittee may also propose in-stream monitoring where it would complement the overall monitoring plan. The monitoring plan shall be adjusted as additional outfalls are identified in accordance with the schedule required in (a) above and as accumulating data may suggest.
 - (c) The permittee shall include the location of all currently known MS4 outfalls with the potential of discharging the pollutant(s) of concern, the schedule for discovering and locating currently unknown MS4 outfalls with the potential of discharging the pollutant(s) of concern, and the monitoring plan, (all as required in (a) and (b) above, and all part of the TMDL Water Quality Recovery Program) in the first Stormwater Management Plan annual report due no earlier than two years after the Division's initial notification of the applicability of a TMDL.
 - (d) The next and each subsequent Stormwater Management Plan annual report shall include an assessment of the available data for each pollutant of concern, and an assessment of the effectiveness of the BMPs employed, to determine what, if any, additional BMP measures may be necessary to return the impaired segments to compliance with state water quality standards. The permittee shall implement appropriate BMPs to control the pollutant(s) of concern to the maximum extent practicable. Implementation of the appropriate best management practices

constitutes compliance with the standard of reducing pollutants to the maximum extent practicable.

- (e) Following any review and comment by the Division on the TMDL Water Quality Recovery Program, the permittee shall incorporate any necessary changes into the program. The permittee shall incorporate the revised TMDL Water Quality Recovery Program into the Stormwater Management Plan.

The permittee can identify the impaired stream segments in the MS4 jurisdictional area by referencing the 2004 Integrated 305(b) and 303(d) Report (or current version), available on the website of the Division of Water Quality Modeling and TMDL Unit.

12. Municipalities shall incorporate in their Stormwater Management Plan site-specific stormwater management requirements for streams supporting federally-listed threatened and endangered aquatic animal species required by site-specific management plans and schedules developed under provisions of 15A NCAC 2B .0110. Certain waters provide 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 and subsequent modifications. Maintenance and recovery of the water quality conditions, required to sustain and recover federally listed threatened and endangered aquatic animal species, contributes to the support and maintenance of a balanced and indigenous community of aquatic organisms and thereby protects the biological integrity of the waters.

| | | | | | | | |
|---|---|---|---|---|--|--|--|
| | | | | | | | |
| X | X | X | X | X | | | |
| X | X | X | X | X | | | |
| X | X | X | X | X | | | |

SECTION B: PUBLIC EDUCATION AND OUTREACH

1. Objectives for Public Education and Outreach

- (a) Distribute educational materials to the community.
- (b) Conduct public outreach activities.
- (c) Raise public awareness on the causes and impacts of stormwater pollution.
- (d) Inform the public on steps they can take to reduce or prevent stormwater pollution.

2. BMPs for Public Education and Outreach

The permittee shall implement the following BMPs to meet the objectives of the Public Education and Outreach Program and shall notify the Division prior to modification of any goals.

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|---------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (a) Establish a Public Education and Outreach Program | Develop a public education program and implement within 12 months of the permit issue date. Incorporate outreach elements for significant minority and disadvantaged communities. | X | X | X | X | X |
| (b) Informational Web Site | Develop and maintain internet web site. Post newsletter articles on stormwater, information on water quality, stormwater projects and activities, and ways to contact stormwater management program staff. | X | X | X | X | X |
| (c) Public education materials for schools, homeowners, and/or businesses | Develop general stormwater educational material to appropriate target groups as likely to have a significant stormwater impact. Instead of developing its own materials, the permittee may rely on state-supplied Public Education and Outreach materials, as available, when implementing its own program. | X | X | X | X | X |
| (d) Public education material dissemination | Distribute written educational material to a broad public audience. Possibilities include, but are not limited to utility mailouts and at special events. | X | X | X | X | X |

SECTION C: PUBLIC INVOLVEMENT AND PARTICIPATION

1. Objectives for Public Involvement and Participation

- (a) Provide opportunities for the public, including major economic and ethnic groups, to participate in program development and implementation.
- (b) Comply with applicable state and local public notice requirements.

2. BMPs for Public Involvement and Participation

The permittee shall implement the following BMPs to meet the objectives of the Public Involvement and Participation Program and shall notify the Division prior to modification of any goals.

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (a) Administer a Public Involvement Program | Develop and implement a Public Involvement and Participation Program. | X | X | X | X | X |
| (b) Allow the public an opportunity to review and comment on the Stormwater Plan | Conduct at least one public meeting to allow the public an opportunity to review and comment on the Stormwater Plan. | X | | | | |
| (c) Organize a volunteer community involvement program | Organize and implement a volunteer stormwater related program designed to promote ongoing citizen participation. | | X | X | X | X |
| (c) Establish a Citizens' Group(s) | Develop a citizens' group(s) for input on stormwater issues and the stormwater program. | X | X | X | X | X |

SECTION D: ILLICIT DISCHARGE DETECTION AND ELIMINATION

1. Objectives for Illicit Discharge Detection and Elimination

- (a) Detect and eliminate illicit discharges, including spills and illegal dumping.
- (b) Address significant contributors of pollutants to the MS4. The permittee may require specific controls for a category of discharges, or prohibit that discharge completely, if one or more of these categories of sources are identified as a significant contributor of pollutants to the MS4.
- (c) Implement appropriate enforcement procedures and actions.
- (d) Develop a storm sewer system map showing all outfalls and waters receiving discharges.
- (e) Inform employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

2. BMPs for Illicit Discharge Detection and Elimination

The permittee shall implement the following BMPs to meet the objectives of the Illicit Discharge Detection and Elimination Program and shall notify the Division prior to modification of any goals.

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (a) Develop/Implement Illicit Discharge Detection and Elimination Program | Develop and implement an Illicit Discharge Detection and Elimination Program. Include provisions for program assessment and evaluation. | X | X | X | X | X |
| (b) Establish and maintain appropriate legal authorities | Establish and maintain adequate legal authorities to prohibit illicit discharges and enforce the approved Illicit Discharge Detection and Elimination Program. | | X | X | | |
| (c) Develop a Storm Sewer System Base Map | Identify outfall locations and map stormwater drainage system components. At a minimum, mapping components includes outfalls, drainage areas, and receiving streams. | X | X | X | X | X |
| (d) Implement illicit discharge detection procedures | Implement an inspection program to detect dry weather flows at system outfalls. Establish procedures for tracing the sources of illicit discharges and for removing the sources. Develop procedures for identification of priority areas likely to have illicit discharges. Continue to identify, locate, and update map of drainage system components on a priority basis per approved Illicit Discharge Program. | | X | X | X | X |

| BMP | Measurable Goals | YR 1 | YR 2 | YR 3 | YR 4 | YR 5 |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|---------|
| (e) Conduct employee cross-training | Conduct training for municipal staff on detecting and reporting illicit discharges. | | X | X | X | X |
| (f) Provide public education | Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste. | X | X | X | X | X |
| (g) Establish a public reporting mechanism | Establish and publicize a reporting mechanism for the public to report illicit discharges. | | | X | X | X |

SECTION E: CONSTRUCTION SITE RUNOFF CONTROLS**1. Objectives for Construction Site Runoff Controls**

- (a) Reduce pollutants in stormwater runoff from construction activities disturbing one or more acres of land surface and those activities less than one acre that are part of a larger common plan of development.
- (b) Provide procedures for public input, sanctions to ensure compliance, requirements for construction site operators to implement appropriate erosion and sediment control practices, review of site plans which incorporates consideration of potential water quality impacts, and procedures for site inspection and enforcement of control measures.
- (c) Establish requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

2. BMPs for Construction Site Runoff Controls

The permittee relies on the NCDENR Division of Land Resources (DLR) Erosion and Sediment Control Program to comply with this minimum measure.

The NCDENR Division of Land Resources Erosion and Sediment Control Program effectively meets the requirements of the Construction Site Runoff Controls by permitting and controlling development activities disturbing one or more acres of land surface and those activities less than one acre that are part of a larger common plan of development. This program is authorized under the Sediment pollution Control Act of 1973 and Chapter 4 of Title 15A of the North Carolina Administrative Code. This program includes procedures for public input, sanctions to ensure compliance, requirements for construction site operators to implement appropriate erosion and sediment control practices, review of site plans which incorporates consideration of potential water quality impacts, and procedures for site inspection and enforcement of control measures.

NCDENR Division of Water Quality NPDES general permit for construction activities (NCG010000), specifically Par I, Section A, Paragraphs 3, 4, 5, and 6, effectively meets the above requirements. The NCG010000 permit establishes requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality.

The permittee must provide and promote a means for the public to notify the appropriate authorities of observed erosion and sedimentation problems. The permittee may implement a plan promoting the existence of the NCDENR, Division of Land Resources "Stop Mud" hotline to meet the requirements of this paragraph.

The permittee may pursue local government implementation of the Erosion and Sediment Control Program by requesting a "minor modification" to the permit.

SECTION F: POST-CONSTRUCTION SITE RUNOFF CONTROLS

1. Objectives for Post-Construction Site Runoff Controls

- (a) Manage stormwater runoff from new development / redevelopment that drains to the MS4 and disturbs an acre or more of land surface, including projects less than an acre that are part of a larger common plan of development or sale.
- (b) Provide a mechanism to require long term operation and maintenance of BMPs.
- (c) Ensure controls are in place to minimize water quality impacts.

2. BMPs for Post-Construction Site Runoff Controls

The permittee shall implement the following BMPs to meet the objectives of the Post-Construction Stormwater Management Program.

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (a) Establish a Post-Construction Stormwater Management Program | Develop, adopt by ordinance (or similar regulatory mechanism), implement, and enforce a program to address stormwater runoff from new development and redevelopment. The ordinance must be reviewed and approved by the Director prior to implementation. Ensure that controls are in place to prevent or minimize water quality impacts. | | X | X | X | X |
| (b) Establish strategies which include BMPs appropriate for the MS4 | Develop and implement strategies that include a combination of structural and/or non-structural BMPs. Provide a mechanism to require adequate long-term operation and maintenance of structural BMPs. Require annual inspection reports of permitted structural BMPs performed by a qualified professional. | | X | X | X | X |
| (c) Establish a program to control the sources of fecal coliform to the maximum extent practicable | Control the sources of fecal coliform to the maximum extent practicable. Develop and implement an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. Municipalities must coordinate this program with the county health department. | | | X | X | X |

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (d) Establish trout waters (Tr) protection measures (for programs with development or redevelopment draining to Tr waters) | Develop, adopt, and implement an ordinance (or similar regulatory mechanism) to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature. | X | X | X | X | X |

3. The evaluation of Post-construction Stormwater Management Program measures

- (a) Those areas within the jurisdictional area of the permittee that are already subject to the existing state stormwater management programs listed herein are deemed compliant with the post-construction stormwater management model practices identified in (b) below. The listed programs are: the Water Supply Watershed protection programs for WS-I – WS-IV waters, the HQW and ORW waters management strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, the Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy, and the Randleman Lake Water Supply Watershed program.
- (b) Model Practices. For those areas within the jurisdictional area of the permittee that are not subject to the post-construction stormwater management provisions of another existing state stormwater management program, the permittee’s Post-construction Stormwater Management Program must equal or exceed the stormwater management and water quality protection provided by the following model practices.
 - (i) The permittee may issue a local stormwater management permit to a development or redevelopment project as either a low density project or a high density project.
 - (ii) A project may be permitted as a low density project if it meets the following criteria:
 - (A) No more than two dwelling units per acre or 24% built-upon area;
 - (B) Use of vegetated conveyances to the maximum extent practicable;
 - (C) All built-upon areas are at least 30 feet landward of perennial and intermittent surface waters; and,
 - (D) Deed restrictions and protective covenants are required by the locally issued permit and incorporated by the development to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans.

SECTION G: POLLUTION PREVENTION AND GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS

1. Objective for Pollution Prevention and Good Housekeeping for Municipal Operations

Prevent or reduce stormwater pollution from municipal operations.

2. BMPs for the Pollution Prevention and Good Housekeeping for Municipal Operations

The permittee shall implement the following BMPs to meet the objectives of the Pollution Prevention and Good Housekeeping Program and shall notify the Division prior to modification of any goals.

| BMP | Measurable Goals | YR | YR | YR | YR | YR |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|----|----|----|----|
| | | 1 | 2 | 3 | 4 | 5 |
| (a) Develop an operation and maintenance program | Develop an operation and maintenance program that has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. | | X | X | X | X |
| (b) Inspection and evaluation of facilities, operations, and the MS4 system and associated structural BMPs. | Develop an inventory of all facilities and operations owned and operated by the permittee with the potential for generating polluted stormwater runoff, including the MS4 system and associated structural BMPs. Inspect potential sources of polluted runoff, the stormwater controls, and conveyance systems. Evaluate the sources, document deficiencies, plan corrective actions, and document the accomplishment of corrective actions. | | X | X | X | X |
| (c) Conduct staff training | Conduct staff training specific for pollution prevention and good housekeeping procedures. | | X | X | X | X |
| (d) Review of municipality owned or operated regulated industrial activities | Conduct annual review of the industrial activities with a Phase I NPDES stormwater permit owned and operated by the permittee. Review the following aspects: the Stormwater Pollution Prevention Plan where one is required, the timeliness of any monitoring reports required by the Phase I permit, and the results of inspections and subsequent follow-up actions at the facilities. | | X | X | X | X |

PART III PROGRAM ASSESSMENT

1. Implementation of the Stormwater Plan will include documentation of all program components that are being undertaken including, but not limited to, inspections, maintenance activities, educational programs, implementation of BMPs, enforcement actions, and other stormwater activities. If monitoring and sampling are being performed documentation of results shall be included. Documentation will be kept on-file by the permittee for a period of five years and made available to the Director or his authorized representative immediately upon request.
2. The permittee's Stormwater Plan will be reviewed and updated as necessary, but at least on an annual basis. The permittee will submit a report of this evaluation and monitoring information to the Division on an annual basis. This information will be submitted by August 31 of each year and cover the previous year's activities from July 1 to June 31. The permittee's reporting will include appropriate information to accurately describe the progress, status, and results of the permittee's Stormwater Plan and will include, but is not limited to, the following components:
 - (a) The permittee will give a detailed description of the status of implementation of the Stormwater Plan. This will include information on development and implementation of all components of the Stormwater Plan for the past year and schedules and plans for the year following each report.
 - (b) The permittee will adequately describe and justify any proposed changes to the Stormwater Plan. This will include descriptions and supporting information for the proposed changes and how these changes will impact the Stormwater Plan (results, effectiveness, implementation schedule, etc.).
 - (c) The permittee will document any necessary changes to programs or practices for assessment of management measures implemented through the Stormwater Plan. In addition, any changes in the cost of, or funding for, the Stormwater Plan will be documented.
 - (d) The permittee will include a summary of data accumulated as part of the Stormwater Plan throughout the year along with an assessment of what the data indicates in light of the Stormwater Plan.
 - (e) The permittee will provide information on the annual expenditures and budget anticipated for the year following each report along with an assessment of the continued financial support for the overall Stormwater Plan.
 - (f) The permittee will provide a summary of activities undertaken as part of the Stormwater Plan throughout the year. This summary will include, but is not limited to, information on the establishment of appropriate legal authorities, project assessments, inspections, enforcement actions, continued inventory and review of the storm sewer system, education, training and results of the illicit discharge detection and elimination program.

3. The Director may notify the permittee when the Stormwater Plan does not meet one or more of the requirements of the permit. Within 30 days of such notice, the permittee will submit a plan and time schedule to the Director for modifying the Stormwater Plan to meet the requirements. The Director may approve the corrective action plan, approve a plan with modifications, or reject the proposed plan. The permittee will provide certification in writing (in accordance with Part IV, Paragraph 2) to the Director that the changes have been made. Nothing in this paragraph shall be construed to limit the Director's ability to conduct enforcement actions for violations of this permit.
4. The Division may request additional reporting information as necessary to assess the progress and results of the permittee's Stormwater Plan.

PART IV REPORTING AND RECORD KEEPING REQUIREMENTS**1. Records**

The permittee shall retain records of all information required by this permit for a period of at least 5 years from the date of acquisition. This period may be extended by request of the Director at any time prior to the end of the five-year period.

2. Report Submittals

- (a) Duplicate signed copies of all reports required herein, shall be submitted to the following address:

Department of Environment and Natural Resources
Division of Water Quality
Stormwater Permitting Unit
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

- (b) All applications, reports, or information submitted to DWQ shall be signed by a principal executive officer, ranking elected official or duly authorized representative. A person is a duly authorized representative only if:
- (i) The authorization is made in writing by a principal executive officer or ranking elected official;
 - (ii) The authorization specified either an individual or a position having responsibility for the overall operation of a regulated facility or activity or an individual or position having overall responsibility for environmental/stormwater matters; and
 - (iii) The written authorization is submitted to the Director.
- (c) Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

3. Recording Results

For each activity performed or information collected pursuant to the requirements of this permit, the permittee shall record the following information:

- (a) The dates, exact place, and time of the activity or information collected;
- (b) The individual(s) who performed activity;
- (c) The techniques or methods used; and
- (d) The results of such activity or information collected.

4. Twenty-four Hour Reporting

The permittee shall report to the central office or the appropriate regional office any noncompliance that may constitute an imminent threat to health or the environment. Any information shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

The written submission shall contain a description of the noncompliance, and its causes; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time compliance is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

5. Annual Reporting

The permittee will submit reporting and monitoring information on an annual basis per Part III of this permit on forms provided by the DWQ.

6. Additional Reporting

The Director may request reporting information on a more frequent basis as deemed necessary either for specific portions of the permittee's Stormwater Plan, or for the entire Program.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in applying to be covered under this permit or in any report to the Director, it shall promptly submit such facts or information.

PART V STANDARD CONDITIONS**SECTION A: COMPLIANCE AND LIABILITY****1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of permit coverage upon renewal application.

- (a) The permittee shall comply with standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- (b) The Clean Water Act provides that any person who violates a permit condition is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$27,500 per day for each violation). Any person who negligently violates any permit condition is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. Also, any person who violates a permit condition may be assessed an administrative penalty not to exceed \$11,000 per violation with the maximum amount not to exceed \$137,500. [Ref: Section 309 of the Federal Act 33 USC 1319 and 40 CFR 122.41(a).]
- (c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: North Carolina General Statutes 143-215.6A]
- (d) Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR Part 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR Part 19 and the Act, penalties for Class II violations

are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

3. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321.

5. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

6. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

7. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the coverage issued pursuant to this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required by this permit.

8. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

9. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

10. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The notification of planned changes or anticipated noncompliance does not stay any permit condition.

SECTION B: OPERATION AND MAINTENANCE of POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are owned and/or operated by the permittee to achieve compliance with the conditions of this permit

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

SECTION C: MONITORING AND RECORDS**1. Representative Sampling**

When required herein, stormwater samples collected and measurements taken shall be characteristic of the volume and nature of the permitted discharge. Analytical stormwater sampling shall be performed during a representative storm event. These samples shall be taken on a day and time that is characteristic of the discharge. Where appropriate, all stormwater samples shall be taken before the discharge joins or is diluted by any other waste stream, body of water, or substance. When specified herein, monitoring points established in this permit shall not be changed without notification to and approval of the Director.

2. Flow Measurements

Where required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges.

3. Test Procedures

Test procedures for the analysis of pollutants shall conform to the EMC regulations published pursuant to NCGS 143-215.63 et. seq, the Water and Air Quality Reporting Acts, and to regulations published pursuant to Section 304(g), 33 USC 1314, of the Federal Water Pollution Control Act, as Amended, and Regulation 40 CFR 136.

To meet the intent of the monitoring required by this permit, all test procedures must produce minimum detection and reporting levels and all data generated must be reported down to the minimum detection or lower reporting level of the procedure.

4. Inspection and Entry

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Director), or in the case of a facility which discharges through a municipal separate storm sewer system, an authorized representative of a municipal operator or the separate storm sewer system receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to;

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

5. Availability of Reports

Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, analytical data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.

PART VI LIMITATIONS REOPENER

The issuance of this permit does not prohibit the Director from reopening and modifying the permit, revoking and reissuing the permit, or terminating the permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. al.

**PART VII ADMINISTERING AND COMPLIANCE MONITORING FEE
REQUIREMENTS**

The permittee must pay the administering and compliance monitoring fee within 30 (thirty) days after being billed by the Division. Failure to pay the fee in a timely manner in accordance with 15A NCAC 2H .0105(b)(4) may cause this Division to initiate action to revoke the permit.

PART VIII DEFINITIONS

1. Act
See Clean Water Act.

2. Best Management Practice (BMP)
Measures or practices used to reduce the amount of pollution entering surface waters. BMPs can be structural or non-structural and may take the form of a process, activity, physical structure or planning (see non-structural BMP).

3. Built-upon Area
That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

4. Clean Water Act
The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC 1251, et. seq.

5. Common Plan of Development
A construction or land disturbing activity is part of a larger common plan of development if it is completed in one or more of the following ways:
 - In separate stages
 - In separate phases
 - In combination with other construction activities

It is identified by the documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, plats, blueprints, marketing plans, contracts, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot. .

It can include one operator or many operators.

6. Department
Department means the North Carolina Department of Environment and Natural Resources

7. Division (DWQ)

The Division of Water Quality, Department of Environment and Natural Resources.

8. Director

The Director of the Division of Water Quality, the permit issuing authority.

9. EMC

The North Carolina Environmental Management Commission.

10. Grab Sample

An individual sample collected instantaneously. Grab samples that will be directly analyzed or qualitatively monitored must be taken within the first 30 minutes of discharge.

11. Hazardous Substance

Any substance designated in 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

12. Illicit Discharge

Any discharge to a MS4 that is not composed entirely of stormwater except discharges pursuant to an NPDES permit (other than the NPDES MS4 permit), allowable non-stormwater discharges, and discharges resulting from fire-fighting activities.

13. Industrial Activity

For the purposes of this permit, industrial activities shall mean all industrial activities as defined in 40 CFR 122.26.

14. 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, county, 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 Clean Water Act (CWA) that discharges to waters of the United States or waters of the State.
- 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 in 40 CFR 122.2

15. Non-stormwater Discharge Categories

The following are categories of non-stormwater discharges that the permittee must address if it identifies them as significant contributors of pollutants to the storm sewer system: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, [as defined in 40 CFR 35.2005(20)], uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the definition of illicit discharge and only need to be addressed where they are identified as significant sources of pollutants to waters of the United States).

16. Non-structural BMP

Non-structural BMPs are preventive actions that involve management and source controls such as: (1) Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space, provide buffers along sensitive water bodies, minimize impervious surfaces, and/or minimize disturbance of soils and vegetation; (2) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure; (3) education programs for developers and the public about minimizing water quality impacts; (4) other measures such as minimizing the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention.

17. Outfall

The point of wastewater or stormwater discharge from a discrete conveyance system. See also point source discharge of stormwater.

18. Permittee

The owner or operator issued this permit.

19. Point Source Discharge of Stormwater

Any discernible, confined and discrete conveyance including, but not specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which stormwater is or may be discharged to waters of the state.

20. Redevelopment

Means any rebuilding activity unless that rebuilding activity;

1. Results in no net increase in built-upon area, and
2. Provides equal or greater stormwater control than the previous development.

21. Stormwater Runoff

The flow of water which results from precipitation and which occurs immediately following rainfall or as a result of snowmelt.

22. Total Maximum Daily Load (TMDL)

A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL is a detailed water quality assessment that provides the scientific foundation for an implementation plan. The implementation plan outlines the steps necessary to reduce pollutant loads in a certain body of water to restore and maintain water quality standards in all seasons. The Clean Water Act, Section 303, establishes the water quality standards and TMDL programs.

23. Toxic Pollutant

Any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.