

May 17, 2006

H 2166. STORMWATER MANAGEMENT 2006. Filed 5/17/06. *TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.*

Rules, Sunset Change, and Definitions. Disapproves the permanent Phase II stormwater rules of the Environmental Management Commission (EMC) except for the following rules that are to be implemented in conjunction with this bill: 15A NCAC 2H.1014 (stormwater management for urbanizing areas), 2H.1017 (application schedule and required contents), 2H.0126 (stormwater discharges) and 2H.0153 (application schedule and required contents). Accelerates the sunset of the 2004 Phase II stormwater management legislation (Section 15 of SL 2004-163, hereafter "2004 Phase II Law") to July 1, 2006, the effective date of this bill. Sets out definitions, including "built-upon area," "new development," "redevelopment," "sensitive receiving waters," and "significant contributor of pollutants."

County Coverage. Beginning July 1, 2007, broadens the areas of counties subject to Phase II stormwater rules beyond the 2004 Phase II Law, but not to the full extent of coverage under the permanent Phase II stormwater rules. Apart from future delineated areas or areas covered by future petitions for inclusion in the Phase II program, the 2004 Phase II Law covered (1) unincorporated areas considered "urbanized" under federal Census Bureau standards only within rings of one to three miles outside federally designated Phase II cities (these rings are called "municipal spheres of influence") and (2) one county (Mecklenburg) that had more than 85% of its area (the "tipping" point) considered "urbanized" or otherwise covered by existing stormwater requirements. The bill lowers this "tipping point" to 50% and broadens its method of calculation to include nutrient sensitive waters designation, unless the county has an actual population growth rate of less than the state growth rate for the last ten years. It also includes counties that are projected to grow more than 1.3 times the state population growth rate for the next ten years. As of the bill introduction date, no final list of covered counties was available, but the counties that would be covered without applying the "slow growth exclusion" were Alamance, Alexander, Brunswick, Buncombe, Burke, Catawba, Chatham, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Guilford, Haywood, Mecklenburg, Nash, New Hanover, Onslow, Orange, Pitt, Rowan, Wake and Wayne. In these counties, the post-construction stormwater control provisions of Phase II, which require a stormwater permit before development and long-term maintenance of stormwater best management practices, would be administered by the State unless the county voluntarily undertook the program.

Vested Rights. An important dispute in previous stormwater rules and bills has been how transition provisions work; in particular, when a developer has a "vested right" that avoids the need for the new stormwater permit program and regulations of Phase II. This bill adds a definition of "new development" that implies that a developer must have obtained a building permit, phased development plan approval, or site-specific development plan approval before the date that a Phase II program becomes effective in the jurisdiction where the development is located in order to have a vested right that avoids Phase II coverage. An additional provision in section 15 of the bill clarifies that it is not intended to affect any vested right to development under any provision of statutory or common law. This, in effect, gives developers a broader claim of vested right than is available under present law.

Post-construction stormwater control measures. Section 7 of the bill mediates differences between the EMC permanent rule and the 2004 Phase II Law on design standards and the design storm used to design stormwater best management practices. The bill preserves the distinction between low-density development (less than or equal to 24% built-upon area, or on land draining to shellfish waters, less than or equal to 12% built-upon area) and high-density development, which requires structural stormwater controls that treat runoff from the first one inch of rain (or, in the twenty coastal area management counties, the first one and one-half inch of rain). Other design standards are left essentially as in the EMC permanent rule.

Designation and petition processes. Generally follows the 2004 Phase II law provisions.

Implementation schedule. Requires the post-construction program to be implemented no later than 24 months after a regulated entity's permit is issued (the 2004 Phase II Law had

allowed up to 36 months for regulated entities brought into the program by designation or other regulatory process).

Rulemaking. Authorizes EMC further rulemaking, but only to provide a complete and consistent regulatory scheme while remaining substantively identical to most provisions of the bill.

City and county stormwater authority. Provides explicit authority under GS chapters 160A and 153A for local governments to adopt stormwater control ordinances to implement state-mandated stormwater programs such as Phase II.

Effective Date. Effective July 1, 2006. Sections 2 through 11 of this bill expire if and when permanent rules to replace those sections have become effective.

Intro. by Gibson and L. Allen.

GS 143, 153A, 160A