

May 17, 2006

**S 1566. STORMWATER MANAGEMENT 2006 (=H 2166).** 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.* Identical to H 2166, filed 5/17/06.

**Intro. by Clodfelter.**

GS 153A, 160A

July 12, 2006

**S 1566. STORMWATER MANAGEMENT 2006.** Filed 5/17/06. Senate committee substitute makes the following changes to 2nd edition.

Deletes former section 1(b), which would have identified several rules adopted by the Environmental Management Commission (EMC) as not disapproved. In Section 2, deletes the definition of "new development," revises the definition of "redevelopment," and sets out new definition of "development" and "shellfish resource waters." Adds new section 3 requiring the EMC to implement the federal Phase II stormwater management requirements set out in federal regulations. Section 4 (was, Section 3) sets out the types of areas in which development must comply with the standards in Section 9 (previous version also required redevelopment projects to comply with the standards). Amends Section 4(a) (unincorporated areas of the county) and 4(b) (incorporated areas of the county) to provide that in order for a development to be subject to the standards in Section 9, the development must disturb one acre or more of land in that area. Amends Section 4(a)(4) to raise the "tipping point" from 50% to 75% (see discussion in 5/17/06 digest) and adds the Randleman Lake watershed to the list of stormwater programs triggering coverage. Amends Section 4(a)(5) to include urbanized counties that have growth exceeding the State population growth rate for the period 1995 through 2004 (previous version limited it to counties with actual or projected population growth rate that exceeded 1.3 times the State rate).

Section 6 (was, Section 5) addresses the process for Phase II National Pollutant Discharge Elimination System (NPDES) petitions. Amends Section 6(2)(1) to add new language requiring the Commission to grant an adverse impact petition and require a permit if the petitioner shows that the discharger discharges or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation.

Section 7 (was, Section 6) addresses the requirement that entities must develop, implement and enforce a stormwater management plan that satisfies federal minimum control measures in order to obtain an NPDES permit. Adds new provision stating that entities may propose using any existing state or local programs to meet the federal measures.

Adds new Section 8 to establish exclusions from the standards in Section 9, including any redevelopment and any development authorized by certain building permits, site-specific development plans, and phased development plans. Also excludes development authorized by a vested right to the development issued by a local government as provided by law or a vested right to the development pursuant to common law.

Section 9 (was, Section 7) sets out the standards that development programs must meet ("post-construction practices"). Adds new subsection (a), which provides that a program will be deemed to be compliant in those areas where it is implementing certain programs subject to state regulation, such as the Neuse River Basin Nutrient Sensitive Waters Management Strategy. Adds new subsection (b), which provides that an entity may use several different methods for meeting the standards. Revises subsection (c)(1) (was, Section 7(a)(1)) to change the thresholds for low-density projects to include: (i) a project located within one-half mile of and draining to Shellfish Resource Waters if it contains no more than 12% built-upon area and (ii) a project not located within one-half mile of Shellfish Resource Waters if it contains no more than 24% built-upon area and no more than two dwelling units per acre. Previous version referred to Class SA waters instead of Shellfish Resource Waters and did not include the reference to the number of dwelling units. Includes new provision that allows a project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density to be considered low density if the project meets the low density standard and locate the higher density in the upland areas and away from surface waters and drainageways to the maximum extent possible. Revises subsection (c)(2)(was, Section 7(a)(2)) to (1) change the thresholds for

high-density projects to be consistent with the low-density thresholds; (2) adds a provision requiring projects located within one-half mile and draining into Shellfish Resource Waters to control and treat certain runoff for the one-year, twenty-four hour storm; and (3) provide that structural stormwater management systems in high density projects that drain to Class SA waters may use wet detention ponds if certain conditions are satisfied. Deletes former subsection (7)(f), which would have authorized cluster development in some circumstances. Adds new subsection (9)(k), which specifies the amount of separation required when a best management practice requires a separation from a high water table. Adds new subsection (9)(l), which states that discharges must comply with all applicable State or federal water quality standards.

Adds new Section 11(c) authorizing the Department of Environment and Natural Resources (DENR) to waive the NPDES permit requirement as authorized by federal regulation. Amends Section 12 (was, Section 10) to add a new step to the implementation schedule: DENR must notify a regulated entity that it is subject to regulation and then the entity must apply for a permit within 18 months.

Adds new Section 16, which amends existing law (GS 47-29.1 and GS 143-214.7) to authorize enforcement of land use restrictions related to stormwater by various parties, including property owners, adjacent property owners, certain downstream property owners, local governments, and DENR. Amends Section 17 (was, Section 14) to modify and expand the amendments to GS 153A-453 (counties) and GS 160A-459 (municipalities). Changes would allow local governments to adopt stormwater control ordinances, but would restrict the applicability of the ordinance in the context of public projects that have an NPDES permit. Also authorizes local governments to adopt certain other ordinances (such as an ordinance requiring deed restrictions and protective covenants) and implement certain other controls (such as illicit discharge detection and elimination controls). Makes conforming changes.

July 13, 2006

**S 1566. STORMWATER MANAGEMENT 2006.** Filed 5/17/06. Senate amendment makes the following changes to 3rd edition. Makes technical changes only on page 14 and page 21.

July 19, 2006

**S 1566. STORMWATER MANAGEMENT 2006.** Filed 5/17/06. House committee substitute makes the following changes to 4th edition. Adds new GS 160A-459(e) to prohibit the Environmental Management Commission from requiring a city to implement certain measures in its extraterritorial jurisdiction as a condition for certain permits, unless the city so requests. Restores a missing word to the definition of "regulated entity" in Section 2. Corrects the punctuation and deletes statutory references in the exclusion for certain phased development plans provided in Section 8(1)c. Provides in Section 9(c)(2)e. that, in order to be used for projects draining to Class SA waters, a wet detention pond must be designed in accordance with the requirements of subsection 9(h) (was, designed in accordance with the then current edition of the Department's BMP manual and that comply with the requirements of subsection 9(h).) Makes a clarifying wording change to Section 9(k).

July 25, 2006

**S 1566. STORMWATER MANAGEMENT 2006.** Filed 5/17/06. House amendments make the following changes to 5th edition. Amendment #1 adds a provision to the section specifying how the bill is to be construed, to specify that the definitions of development and redevelopment used in the bill are not to be construed to amend definition of redevelopment in GS 113A-103 or in the Coastal Area Management Act. Amendment #2 adds additional construction language to specify that "common plan of development or sale," as used in the section of the bill relating to post-construction practices, is to be interpreted to be consistent with a specified Department of Environment and Natural Resources memorandum issued July 24, 2006.

August 22, 2006

**SL 2006-246 (S 1566). STORMWATER MANAGEMENT 2006.** AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II STORMWATER MANAGEMENT REQUIREMENTS AND TO PROTECT WATER QUALITY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION. Summarized in *Daily Bulletin* 5/17/06, 7/12/06, 7/13/06, 7/19/06, and 7/25/06. Enacted August 16, 2006. Effective July 1, 2006.