CSRWG 19 June 2008
Wright

Hello Tom – thanks much again for all your hard work. The comments below are intended to supplement the Carteret EDC Letter e-mailed to you and George Givens earlier today; these comments are based on the June 13, 2008 DWQ draft:

1) Add an express exclusion for all Minor Development CAMA Permits issued before the effective date [rationale: development activity authorized under such permits may not take place for several years after permit issuance; there can be minor development CAMA projects that met all then-applicable rules (including then-applicable stormwater rules) and did not need a stormwater permit at the time of permit issuance, and the permit holder/land owner has a right to rely on the regulatory construct in place at the time of (CAMA) permit issuance – an example might be a 10,500 sq ft total BUA waterfront home . . .

2) Add an express clarification that if a project is partially inside the ½ mile SA waters area, and partially outside it, the rules only apply if more than 50% of the project land area is within the ½ mile SA waters area . . . I mentioned this to Bradley Bennett on Monday and he said he thought this is the policy already for existing water supply watershed rules . . .

3) Change the effective date (back) to 1/1/09, as used in the June 5-6 draft; [rationale: the people who are going to be hurt most by a quick effective date are those who did a whole range of things, including buying land and spending money on pre-permit planning and engineering, and surveying, etc. based on 24% low density. The various exclusions to-date in the compromise rules give only minimal relief to this large group of former low density landowners/developers; the 2006 memo that is now to be incorporated gives some relief for residential projects, but not for commercial; the current economic climate ASSURES that there will be no "gold rush" to get permits if Jan. 1, 2009 is the effective date – rather, it will allow a much small amount of activity to take place whereby people trying to cut their losses in tough economic times can apply under the rules that were in place when they invested their money to buy land, draw up engineering plans, have lots surveyed and laid out, and borrow money. . . this is an important issue for the regulated community; I believe I am accurate in saying that allowing for a 1/1/09 effective date would go a long way towards bringing most of the regulated community on board.

4) It is the position of Carteret EDC that wet retention ponds need to be returned to the menu of control systems allowed; to the extent that the rules reference any secondary BMPS, it should be made clear that such devices do not have to meet any specific water table separation requirement as long as it is documented that they can be effective.

5) Fix the greater than 10,000 sq ft BUA permitting issue by clarifying that it will be a one-time "express" construction permit issued to the builder; once constructed to design standards, no further permit transfer or renewal needed.

6) In section (d)(3) – change "accepted by" to "submitted to" on first line of (d)(3) and in the 3rd and 4th lines of (d)(3) change "accepted as complete" to "submitted to" and add the word "complete" before the word "application" [rationale: to make it clear that if the application package is, in fact, complete, it only need be submitted to the agency prior to the effective date of the new rules . . .]

7) per discussion at the last meeting, return to old language re alternative to one-year 24-hour storm definition for quantifying stormwater volumes that must be controlled/treated . . .

8) The rule language should include a new subsection expressly stating that systems described in the DWQ LID manual are included in the menu of potential control systems in (b)(2)(B)(ii). If that cannot be done now due to the manual not existing in final form, the menu should at least include a specific reference to green roofs and to any other known LID techniques. Also do this in paragraph (c).

9) Add a sentence expressly referencing the ongoing innovative stormwater group operating under the CWMTF, and mandating that DWQ actively participate and report back to the EMC and the Legislature on the effectiveness of retrofit efforts and larger scale efforts to control and treat stormwater under this program. Suggested language: [add a new subsection (h) that reads as follows; "It is the intent of the General Assembly to reaffirm its commitment to development of innovative, cost-effective stormwater management for existing and future development in the 20 coastal counties. In furtherance of such goals, the Department shall actively participate in the Innovative Stormwater Advisory Group of the Clean Water Management Trust Fund, and any related activities (see N.C.G.S. 113A-251), and shall prepare and publish a report detailing the results of its involvement and the conclusions reached by the Innovative Stormwater Advisory Group, and on or before December 31, 2010 shall prepare and present a report to the ERC containing specific recommendations for improving stormwater regulation and management in the 20 coastal counties and protecting economic development therein." Re-label the current subsection "(h)" as subsection "(i)"

Below are two more minor requested edits:

1) Add local government requirements to the list of setbacks that can be met concurrently – see on page 3, section (b)(2)(B)(iv)

2) in (b)(4), does the word "wet" need to be added in front of "detention ponds?"

A final issue of major concern is the definition of SA waters with regard to those tidally influenced creeks and waterbodies where the designation as DWQ currently sees it will run upstream to some site-specifically defined "headwaters" point. I understand well why DWQ desires a site-specific stream/headwaters determination on all such streams to maximize the SA waterbody designation and thereby perhaps minimize the potential for downstream flow of significant quantities of bacterial contamination. However, the key issue is not whether something is or is not scientifically a "headwater" of a particular tidally influenced creek, but rather how we best can define with advance certainty an appropriate boundary line within which these rules operate, taking into account not only the regulatory agency's desire to extend the classification up to headwaters, but also the very legitimate regulated community need for certainty in advance on this issue, and recognizing the fact that not all SA water classifications do extend into any headwaters . . . surely there is a more definitive solution that can be crafted here that better provides advance certainty to the regulated community while also defining an appropriate body of SA waters.

Thanks again for your hard work and professionalism throughout this process.

Best regards,

Clark

I. Clark Wright, Jr.
DAVIS HARTMAN WRIGHT PLLC
209 Pollock Street
New Bern, NC 28560
252-514-2828 (office)
252-514-9878 (fax)
252-229-5900 (cell)
icw@dhwlegal.com