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## MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable Brent Jackson, Chairman  
The Honorable Mike Hager, Co-Chairman

FROM: Gerard Carroll  
Chairman, Environmental Management Commission

SUBJECT: Annual Stormwater Management Program Report

DATE: October 19, 2015

Pursuant to G.S. 143-214.7(e), the Environmental Management Commission is required to report annually to the Environmental Review Commission on the implementation of the Stormwater Management Programs. The attached report satisfies this reporting requirement.

If you have any questions or need additional information, please contact Mr. Tracy Davis, PE, Director, Division of Energy, Mineral, and Land Resources by phone at (919) 707-9200 or via e-mail at [tracy.davis@ncdenr.gov](mailto:tracy.davis@ncdenr.gov).

cc: Tom Reeder, Assistant Secretary for Environment  
Tracy Davis, Director, Division of Energy, Mineral, and Land Resources  
Jennifer McGinnis, Commission Counsel, NCGA  
Jeffrey Hudson, Commission Counsel, NCGA  
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# 2015 Stormwater Management Program Annual Report

## In Accordance With G.S. 143-214.7(e)

### Executive Summary

G.S. 143-214.7(e) requires the Environmental Management Commission to annually report to the Environmental Review Commission on the implementation of the Stormwater Management Rules and Programs. The Department of Environmental Quality implements a number of stormwater management programs to protect surface waters from the impacts of runoff from developed and developing areas across the state. The Department has continued implementation of its stormwater permitting programs along with efforts to meet legislative requirements for stormwater program studies and updates. A stakeholder process associated with S.L. 2013-82 has been completed to develop Minimum Design Criteria (MDC) for stormwater control measures and to move forward with rulemaking for Fast Track permitting in the post-construction stormwater program. While this process continues through the rulemaking process, the Department has made MDCs for a number of stormwater control measures available on a voluntary basis for use by the regulated community. The Department will work over the coming year to update technical guidance and provide opportunities for training to facilitate the implementation of the new MDC and associated Fast Track permitting process.

In addition to the MDC process noted above, the Department has put significant effort into the rule re-adoption process required by S.L. 2013-413. Since the Department is already in process with the development of rules for the MDC and fast track process, staff has combined these efforts with the stormwater rule re-adoption process to allow for reorganization of the rules to provide for a more effective rule set. The Department has also completed rulemaking for the adoption of rules for stormwater control requirements for oil and gas exploration activities. These rules, required by S.L. 2013-143, were adopted by the Environmental Management Commission and became effective March 17, 2015. Work also continues in the day to day administration of stormwater permitting programs for post-construction stormwater runoff from new development activities along with federally-mandated point source stormwater permitting for industrial activities and municipalities.

### Background

The Environmental Management Commission (EMC), through the N.C. Department of Environmental Quality (DEQ), implements state and federal programs to control the water quality impacts of stormwater runoff from development activities and urban and developing areas. These programs include the federal National Pollutant Discharge Elimination System (NPDES) program for stormwater discharges that requires permits for point source discharges of stormwater from industrial activities and from certain municipal areas in urbanizing and developing areas. This program is a requirement of the federal Clean Water Act. In addition, the EMC and Department implement state stormwater permitting programs that are designed to control stormwater runoff from new development and redevelopment activities occurring near sensitive areas (Water Supply Watersheds, High Quality and Outstanding Resource Waters, Nutrient Sensitive Waters, Coastal Waters, and post-construction activities adjacent to regulated municipal NPDES areas). These state stormwater programs may be implemented on the state level or on the local level by cities and counties. These programs are designed for the protection of surface waters and their uses and involve the authorities of the Division of Energy, Mineral, and Land Resources and the Division of Water Resources.

### State Stormwater Programs

The Department continues to implement various post-construction state stormwater programs across the state as noted above. More information on the state stormwater programs can be found at: <http://portal.ncdenr.org/web/lr/state-stormwater>. Almost 13,000 projects are covered under state post-construction permits in this program. In FY14-15, around 800 permit approvals were issued on the state

level. In addition, nearly 400 local governments implement post-construction programs and are responsible for stormwater requirements for projects in their jurisdictional areas. The Division has oversight of these local programs through a number of regulatory requirements (some of these are noted in other sections of this report). The Division continues to provide technical assistance and outreach to Division staff, local programs and the regulated community on these programs.

The post-construction stormwater programs often require the use of engineered stormwater controls and the Division continues to provide technical guidance on stormwater control measures through its Stormwater Best Management Practices (BMP) Manual that is available online at: <http://portal.ncdenr.org/web/lr/bmp-manual>. Division staff has met extensively with a stakeholder group formed to assist with development of Minimum Design Criteria (MDC) for stormwater control measures. This effort has taken place to meet the requirements of S.L. 2013-82 which requires development of rules and procedures for a fast track permitting program for post-construction stormwater permit review. The team's assistance has been valuable in establishing MDC for a significant number of stormwater control measures. These MDC's will provide valuable design guidance and consistency for the regulated community and to our Division staff. The Division will continue to work to add information in our technical design guidance to provide ongoing assistance to the regulated community and other interested parties in the design and implementation of appropriate stormwater measures.

The Division participates in a number of workshops, seminars and similar meeting situations to provide updates on ongoing activities and information on the technical aspects of our programs. Included are meetings with Professional Engineers of NC, NC Association of Soil Surveyors, NC Chapter of the American Public Works Association, Stormwater Association of NC, Workshops with NC State University, Workshops through the NC Coastal Federation and other industry, local government and environmental groups.

## **Federal Stormwater NPDES Programs**

### Municipal Separate Storm Sewer System NPDES Permits

Previous reports have outlined ongoing activities associated with implementation of the federal municipal (municipal separate storm sewer systems or MS4) NPDES stormwater program. Permits under this program currently regulate 115 governmental entities across the state. The Division and EMC are required to continue to review other potential entities for designation into this program. On the federal level, EPA regulations automatically designate local governments located in federally-designated urbanized areas. Changes to the federal census also lead to changes in MS4 coverage. In North Carolina, data from the 2010 federal census impacted a few municipalities across the state making them subject to the MS4 permitting requirements. Those municipalities (Lexington, New Bern and Statesville) have MS4 permits in house for issuance over the coming months. In the upcoming year, nearly 80 of the MS4 programs in NC will be up for permit renewal. Division staff will undertake extensive efforts to review renewal applications and work with EPA to review and finalize draft permits for these entities.

The Division provides outreach and information to these local government entities in various meeting opportunities. This outreach is provided, in part, through an ongoing audit program the Division implements to assess portions of the permitted communities each year. This audit process for MS4s is coordinated with audits for other existing programs like the Water Supply Protection program. The Water Supply Protection Program requires local implementation of program requirements for approximately 280 local government entities across the state to protect surface waters used for drinking water supplies. The Division works with nearly 400 local governments that are responsible for their local stormwater management programs across the state. Over the last few years, the Division has implemented some audit options to more effectively use limited staff resources to stay in contact with the local programs. These procedures have allowed the Division to focus on key component areas of a local program each year and spend time with entities to more effectively carry out our audit procedures. These efforts have been successful and well received by the local governments. The Division is currently working with the EPA to review other alternatives in these audit

programs that will meet our federal obligations and also allow us to more effectively use our resources to establish a sustainable audit/inspection program.

### Industrial Stormwater NPDES Permits

In the industrial stormwater NPDES permitting program, the Division has current permit coverage for around 4,000 industrial facilities across the state. The Division has reissued three general stormwater industrial permits since September 2014 covering around 300 facilities statewide and worked extensively on a fourth general permit covering over 400 additional facilities that will be reissued later in 2015. The renewals made several procedural changes to promote stormwater pollution prevention and the development of more effective tools to help the permit holders and the Division comply with federal regulations. These permits and associated technical guidance information can be found at <http://portal.ncdenr.org/web/lr/npdes-stormwater#tab-3>.

The Division has continued to utilize an electronic renewal process as outlined in last year's report. This effort has been very successful and has made the renewal process easier for the applicants and saved mailing costs for renewal letters and permits. The process does not yet allow the permittee's data corrections or renewal request to go directly into our permitting database, so there are still significant administrative work efforts on the Division's end of the process. The Environmental Protection Agency is finalizing rules (expected by the end of 2015) that will require electronic submittal of all application information and permit data and reports within the next few years. The Division will need additional resources to allow it to establish a system that meets these requirements. In the long run, this will be a benefit to the program, but upfront there will be a need for funds to establish the electronic procedures necessary.

In response to issues related to the coal-fired power facilities, the Division continues to devote a significant amount of resources to review and respond to permitting and technical questions and issues. The Division is currently working with ongoing Department efforts to review permitting and compliance efforts needed to assure that proper stormwater NPDES permit coverage is in place for all regulated facilities and that these efforts are coordinated with similar efforts in other Department program areas. Division staff participate in regular Departmental interdivisional permitting and technical meetings on these facilities. Through September 2015, stormwater NPDES permits for five facilities have been issued (Riverbend, Marshall, Allen, Dan River and Cliffside).

### **Response to Legislative Changes**

The stormwater program continues to work with implementation of ongoing legislative changes that affect these program areas. The 2014 report outlined the Division's extensive efforts to address issues related to the stormwater rules definition of built-upon area in S.L. 2013-413. After extensive rule making efforts on this issue, the definition was again modified by 2015 session law. S.L. 2015-149 established a new definition of built-upon area and placed the definition in the stormwater statutes. The Division will implement this definition and will reference the statute definition in updated rules that are currently in development. S.L. 2013-82 directed the Department to develop Minimum Design Criteria (MDC) and a fast-track permitting process for permits issued in the state stormwater post-construction permitting program. This S.L. required consultation with a technical working group in establishing the MDCs. The MDC stakeholder team is comprised of 25 members who represent environmental consultants, the construction industry, local governments, university faculty, environmental groups, soil scientists, landscape architects, DOT and DEQ. Division staff met monthly beginning in March 2014 with the MDC workgroup in three to five hour sessions to review the various management measures used for stormwater control across the state. Division staff and team members devoted significant time and effort to develop the MDC information and work on rule development required for the implementation of a fast track stormwater permitting process over eighteen regular meetings and numerous subcommittee team meetings. A separate report on this process was submitted on February 1, 2015. Complete information on the process can be found at:

<http://portal.ncdenr.org/web/lr/state-stormwater/mdc-team>. This website outlines the extensive efforts and final products of the team.

In response to rule re-adoption requirements in S.L. 2013-413, the Division has been working extensively with the review of existing stormwater management rules. This review effort is being combined with the rulemaking process for the MDC and fast track stormwater requirements discussed above. This allows for reorganization of the stormwater rules to help integrate the new MDC components and to make the rule requirements easier to find and follow. Some benefits of the new rule organization and rewrite include: decreasing repetition, clarifying requirements, incorporating current technology and design standards, and improving consistency across programs. The Division anticipates that the set of rules will be approved by the EMC in early 2016 with public notice/hearings on the proposed rules in the March-April 2016 timeframe. The EMC could then adopt the final rules as early as July 2016. The stormwater rule review and re-adoption process can be followed at: <http://portal.ncdenr.org/web/lr/rule-readoption>.

The EMC was directed in S.L. 2012-143 to adopt rules for stormwater control for sites where oil and gas exploration and development activities are conducted. The Division has worked with the EMC in development of final rules which became effective in March 2015. No applications have been made for stormwater permit coverage under these rule requirements at this time.

### **Rule Making Efforts – Federal**

The Division continues to monitor potential rule changes to federal stormwater regulations. As noted previously, EPA has released proposed rules to require electronic application and report submittal under various federal programs, including the NPDES stormwater programs. These changes will potentially require extensive efforts on the state level to come into compliance. It will also require the regulated community to adjust to electronic submittal. It is likely that over time these changes will result in cost savings, but the initial efforts to make electronic procedures available will take resources on the state level. EPA has gone through multiple comment periods on these proposed changes and has been working to address state and regulated community comments. The Division will continue to evaluate the process and respond to need changes once the rules are finalized. It is anticipated the final EPA regulations will be issued by the end of 2015 with states then working over the next few years to develop programs and procedures to come into compliance.

### **Technical Assistance and Outreach**

The Division continues to provide technical assistance and outreach in all of its stormwater management program areas. A few major areas of technical assistance/outreach are:

- ♦ Maintenance of the Stormwater BMP Manual and technical assistance on the materials. The MDC process discussed above will result in significant review and updates to this guidance document over the next year.
- ♦ Outreach and education through visits to schools, meetings with local governments, various councils of government, exhibits at festivals and fairs, workshops for the regulated community and through the use of our outreach and education Listserv. More information about the Division's stormwater awareness outreach and education efforts can be found at: <http://www.ncstormwater.org>. The program has experienced some decline in these outreach activities due to loss of resources in this important program area.
- ♦ Partnership with N.C. State University to offer regular stormwater workshop opportunities, including regular BMP Reviewer Certification workshops for local governments. The workshop includes training on stormwater management, regulatory issues and review of BMP design, implementation, maintenance and inspection. Of significant note in the coming year is that we anticipate partnering with NC State on workshops across the state associated with the minimum design criteria that are currently being finalized.