

§ 143-214.7. Stormwater runoff rules and programs.

(a) Policy, Purpose and Intent. – The Commission shall undertake a continuing planning process to develop and adopt a statewide plan with regard to establishing and enforcing stormwater rules for the purpose of protecting the surface waters of the State. It is the purpose and intent of this section that, in developing stormwater runoff rules and programs, the Commission may utilize stormwater rules established by the Commission to protect classified shellfish waters, water supply watersheds, and outstanding resource waters; and to control stormwater runoff disposal in coastal counties and other nonpoint sources. Further, it is the intent of this section that the Commission phase in the stormwater rules on a priority basis for all sources of pollution to the water. The plan shall be applied evenhandedly throughout the State to address the State's water quality needs. The Commission shall continually monitor water quality in the State and shall revise stormwater runoff rules as necessary to protect water quality. As necessary, the stormwater rules shall be modified to comply with federal regulations.

(a1) Definitions. – The following definitions apply in this section:

(1) Development. – Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

(2) Redevelopment. – Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

(b) The Commission shall implement stormwater runoff rules and programs for point and nonpoint sources on a phased-in statewide basis. The Commission shall consider standards and best management practices for the protection of the State's water resources in the following order of priority:

- (1) Classified shellfish waters.
- (2) Water supply watersheds.
- (3) Outstanding resource waters.
- (4) High quality waters.

(5) All other waters of the State to the extent that the Commission finds control of stormwater is needed to meet the purposes of this Article.

(b1) The Commission shall develop model practices for incorporation of stormwater capture and reuse into stormwater management programs and shall make information on those model practices available to State agencies and local governments.

(b2) For purposes of implementing stormwater programs, "built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle. The owner or developer of a property may opt out of any of the exemptions from "built-upon area" set out in

this subsection. For State stormwater programs and local stormwater programs approved pursuant to subsection (d) of this section, all of the following shall apply:

- (1) The volume, velocity, and discharge rates of water associated with the one-year, 24-hour storm and the difference in stormwater runoff from the predevelopment and postdevelopment conditions for the one-year, 24-hour storm shall be calculated using any acceptable engineering hydrologic and hydraulic methods.
- (2) Development may occur within the area that would otherwise be required to be placed within a vegetative buffer required by the Commission pursuant to G.S. 143-214.1 and this section provided the stormwater runoff from the entire impervious area of the development is collected, treated, and discharged so that it passes through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable State and federal stormwater management requirements. For the purpose of this subdivision, the entire impervious area of the development shall not include any portion of a project that is within a North Carolina Department of Transportation or municipal right-of-way.
- (3) The requirements that apply to development activities within one-half mile of and draining to Class SA waters or within one-half mile of Class SA waters and draining to unnamed freshwater tributaries shall not apply to development activities and associated stormwater discharges that do not occur within one-half mile of and draining to Class SA waters or are not within one-half mile of Class SA waters and draining to unnamed freshwater tributaries.

(b3) Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment, irrespective of whether the impervious surface that existed before the redevelopment is to be demolished or relocated during the development activity. A property owner may elect to treat the stormwater resulting from the net increase in built-upon area above the preexisting development for the purpose of exceeding allowable density under the applicable water supply watershed rules as provided in G.S. 143-214.5(d3). This subsection applies to all local governments regardless of the source of their regulatory authority. Local governments shall include the requirements of this subsection in their stormwater ordinances.

(b4) New stormwater permits and stormwater permits that are reissued due to transfer, modification, or renewal shall require the permittee to submit an annual certification on the project's conformance with permit conditions. The annual certification shall be completed by the permit holder or their designee. The Department shall not require the annual certification to be completed by another party besides the permit holder or their designee. The Department shall provide an electronic means of submittal for the permit holder or their designee to satisfy the annual certification requirement. The addition of annual certification requirements to an existing permit or certification shall not be considered to be a new or increased stormwater control.

(b5) An applicant for a new stormwater permit, or the reissuance of a permit due to transfer, modification, or renewal, shall have the option to submit a permit application for processing to a unit of local government with permitting authority in whose jurisdiction the project to be permitted is located, or, where a unit of local government with permitting authority in whose jurisdiction the project to be permitted is located has established a joint program with

one or more units of local government pursuant to subsection (c) of this section, other local governments in the joint program.

(b6) **(Effective July 1, 2024)** Permitting under the authority granted to the Commission by this section shall comply with the procedures and time lines set forth in this subsection. For any development necessitating stormwater measures subject to this section, applications for new permits, permit modifications, permit transfers, permit renewals, and decisions to deny an application for a new permit, permit modification, transfer, or renewal shall be in writing. Where the Commission has provided a digital submission option, such submission shall constitute a written submission. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit or for a renewal of a permit as specified in this subsection after the applicant submits all information required by the Commission, the application shall be deemed approved without modification. [The following provisions apply:]

- (1) The Commission shall perform an administrative review of a new application and of a resubmittal of an application determined to be incomplete under subdivision (3) of this subsection within 10 working days of receipt to determine if the information is administratively complete. If complete, the Commission shall issue a receipt letter or electronic response stating that the application is complete and that a 70-calendar day technical review period has started as of the original date the application was received. If required items or information is not included, the application shall be deemed incomplete, and the Commission shall issue an application receipt letter or electronic response identifying the information required to complete the application package before the technical review begins. When the required information is received, the Commission shall then issue a receipt letter or electronic response specifying that it is complete and that the 70-calendar day review period has started as of the date of receipt of all required information. The Commission shall develop an application package checklist identifying the items and information required for an application to be considered administratively complete.
- (2) If, during the 70-calendar day technical review period, the Commission determines that the application meets the standards for issuance of a stormwater permit, it shall issue the permit.
- (3) If, during the 70-calendar day technical review period, the Commission determines that additional information is required to continue processing the application, the Commission and the applicant shall comply with the following:
 - a. The Commission shall issue a letter or electronic response with a list of the additional information required to issue the permit.
 - b. The applicant shall have 30 calendar days from the date the letter or electronic response is sent to submit the additional information to the Commission.
 - c. If the applicant fails to provide the required information within 30 calendar days, the Commission shall return the application to the applicant, the application is deemed denied, and the applicant must resubmit a complete application with a new application fee before the project may be reviewed.

- d. Upon receipt of the required information from the applicant, the Commission shall have 30 calendar days to complete the technical review and issue the permit, issue the permit with modifications, deny the permit, or issue a letter or electronic response with a list of additional information required to continue processing the application, and the review process will proceed in accordance with sub-subdivision b. of this subdivision.
- e. After issuing a letter or electronic response requesting additional information under this subdivision, the Commission shall not subsequently request additional information that was not previously identified as missing or required in that additional information letter or electronic response. The Commission may request additional information if required for the technical review based on any new information, changed circumstances, or changed designs provided by the applicant in the response under sub-subdivision b. of this subdivision. Where the Commission identifies information that should have been requested, the Commission may include conditions in or modifications to the permit upon issuance addressing this information but shall not deny the permit because of the missing information. This prohibition on permit denial shall not apply where an application was deemed denied under sub-subdivision c. of this subdivision.

(b7) **(Effective July 1, 2024)** All permits issued pursuant to this section for which an expiration date is specified shall be issued for a term not to exceed eight years.

(c) The Commission shall develop model stormwater management programs that may be implemented by State agencies and units of local government. Model stormwater management programs shall be developed to protect existing water uses and assure compliance with water quality standards and classifications. A State agency or unit of local government may submit to the Commission for its approval a stormwater control program or a stormwater permitting program for implementation within its jurisdiction. To this end, State agencies may adopt rules, and units of local government are authorized to adopt ordinances and regulations necessary to establish and enforce stormwater control programs and stormwater permitting programs. Units of local government are authorized to create or designate agencies or subdivisions to administer and enforce the programs. Two or more units of local government are authorized to establish a joint program or a joint stormwater permitting program and to enter into any agreements that are necessary for the proper administration and enforcement of the program.

(c1) Any land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall be enforced by any owner of the land on which the best management practice or project is located, any adjacent property owners, any downstream property owners who would be injured by failure to enforce the land-use restriction, any local government having jurisdiction over any part of the land on which the best management practice or project is located, or the Department through the remedies provided by any provision of law that is implemented or enforced by the Department or by means of a civil action, without first having exhausted any available administrative remedies. A land-use restriction providing for the maintenance of stormwater best management practices or site consistency with approved stormwater project plans filed pursuant to a rule of the Commission, local ordinance, or permit approved by the Commission shall not be declared unenforceable due to lack of privity of estate or contract, due to lack of benefit to particular land, or due to lack of any property interest in particular land. Any person who owns or leases a property subject to a land-use restriction under this section shall abide by the land-use restriction.

(c2) The Department shall transfer a permit issued under this section for a stormwater management system from the declarant of a condominium or a planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration upon request of a permittee if the Department finds that (i) common areas related to the operation and maintenance of the stormwater management system have been conveyed to the unit owners association or owners association in accordance with the declaration; (ii) the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant; and (iii) the stormwater management system is in substantial compliance with the stormwater permit issued to the permittee by the Department. In support of a request made pursuant to this subsection, a permittee shall submit documentation to the Department sufficient to demonstrate that ownership of the common area related to the operation and maintenance of the stormwater management system has been conveyed from the declarant to the association and that the declarant has conveyed at least fifty percent (50%) of the units or lots to owners other than a declarant. For purposes of this subsection, declarant of a condominium shall have the same meaning as provided in Chapter 47C of the General Statutes, and declarant of a planned community shall have the same meaning as provided in Chapter 47F of the General Statutes.

(c3) In accordance with the Federal Aviation Administration August 28, 2007, Advisory Circular No. 150/5200-33B (Hazardous Wildlife Attractants on or Near Airports), neither the Department nor any local government shall require the use of stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section, or in order to comply with any local ordinance adopted under G.S. 143-214.5, at public airports that support commercial air carriers or general aviation services. Development projects located within five statute miles from the farthest edge of an airport air operations area, as that term is defined in 14 C.F.R. § 153.3 (July 2011 Edition), shall not be required to use stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section or with any local ordinance. Existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water in order to comply with this section, or with any local ordinance, and that is located at a public airport or that is within five statute miles from the farthest edge of an airport operations area may be replaced with alternative measures included in the Division of Water Resources' Best Management Practice Manual chapter on airports. In order to be approved by the Department, alternative measures or management designs that are not expressly included in the Division of Water Resources' Best Management Practice Manual shall provide for equal or better stormwater control based on the pre- and post-development hydrograph. Any replacement of existing stormwater retention ponds, stormwater detention ponds, or any other stormwater control measure that promotes standing water shall be considered a minor modification to the State general stormwater permit, and a variance to allow any replacement shall be considered a minor variance under any local government ordinance adopted under G.S. 143-214.5.

(c4) The Department and local governments shall deem runways, taxiways, and any other areas that provide for overland stormwater flow that promote infiltration and treatment of stormwater into grassed buffers, shoulders, and grass swales permitted pursuant to the State post-construction stormwater requirements and to be in compliance with any local government water supply watershed management protection ordinance adopted under G.S. 143-214.5.

(c5) The Department may transfer a permit issued pursuant to this section without the consent of the permit holder or of a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection:

- (1) The Department may require the submittal of an application for a permit transfer when all of the following conditions are met:

- a. The permit holder is one of the following:
 1. A natural person who is deceased.
 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved, has completed the winding up of the business as required by law or equity, and does not have a successor-in-interest to the permit.
 3. A person or entity who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur through foreclosure, bankruptcy, or other legal proceeding.
 4. A person or entity who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner is one of the following:
 1. A person or entity holding title to the property on which the permitted activity is occurring or will occur.
 2. The claimant of the right to engage in the permitted activity.
 3. An association, as defined in G.S. 47C-1-103 or G.S. 47F-1-103.
 4. Any other natural person, group of persons, or entity deemed appropriate by the Department to operate and maintain the permit.
 - c. There will be no substantial change in the permitted activity.
- (1a) The permit transfer application shall be submitted jointly by the permit holder and the successor-owner except that the successor-owner may solely submit the application in any of the following circumstances:
- a. The permit holder is a natural person who is deceased or is a business association that is described by sub-sub-subdivision (1)a.2. of this subsection.
 - b. The successor-owner requests that the Department accept the application without the signature of the permit holder.
- (1b) When the permit transfer conditions set forth in subdivision (1) of this subsection are met on or after July 1, 2021, the Department shall require that a permit transfer application be submitted within 90 days.
- (1c) When the permit transfer conditions set forth in subdivision (1) of this subsection were met prior to July 1, 2021, the Department may request a permit transfer application at any time after determining that the permit transfer conditions have been met and may require this application be submitted within 180 days of the request. Where a permit holder can demonstrate to the Department that the activity on the property was in substantial compliance with its permit in the period either 12 months immediately before or after the conditions of subdivision (1) of this subsection were met, then the requirements included in subdivision (1d) of this subsection shall be the sole responsibility of the successor-owner.
- (1d) If the activity on the property does not conform to the approved plans and permit conditions, then the permit transfer application shall include one of the following:
- a. A written schedule of actions to bring permitted activities into compliance with the approved plans and permit conditions within one calendar year.

b. If there has been or will be a modification to the permitted activity, an application for a permit modification. For low density permits, the permit modification application may include a request for an updated built-upon area limit pursuant to subsection (c6) of this section.

(1e) If the permit holder is a person or entity described in sub-sub-subdivision (1)a.4. of this section, or if the permit holder is the declarant of a condominium or a planned community and the successor-owner is an association as described in sub-sub-subdivision (1)b.3. of this section, the permit holder shall be responsible for satisfying the requirements of subdivision (1d) of this section and for bringing the property into substantial compliance with the approved plans and permit conditions before the permit is transferred.

(2), (3) Repealed by Session Laws 2021-158, s. 4(a), effective September 16, 2021.

(4) Notwithstanding changes to law made after the original issuance of the permit, the Department shall not impose new or different design standards on the project without the prior express consent of the successor-owner.

(c6) With respect to low density permits issued prior to January 1, 2017, that have exceeded a permitted built-upon area limit, the permittee may submit an application for a permit modification that limits built-upon area to the current level. If this request is granted, then the Department shall reissue the permit with an updated built-upon area limit as follows:

(1) If the built-upon area for the project is less than or equal to one hundred ten percent (110%) of the maximum allowable built-upon area for the low density permits, the Department shall issue an updated permit based on the current amount of built-upon area. The permittee shall include compliance with the updated built-upon area limit in the annual certification required by subsection (b4) of this section.

(2) If the built-upon area exceeds one hundred ten percent (110%) of the maximum allowable built-upon area for low density permits at the time of permit issuance, then the Department shall require the permittee to mitigate the impacts of the excess built-upon area to the greatest extent practicable by the addition of one or more stormwater control measures on the property before issuing an updated permit.

(c7) The Department shall not require an applicant for a new permit to take any action with respect to an unaffiliated adjacent property and shall not condition issuance of a new permit on action to be taken by an existing permit holder with respect to the permitting of an unaffiliated adjacent property. For purposes of this section, the following definitions apply:

(1) "Applicant" means the person applying for a new permit to be issued pursuant to this section and, if the applicant is a business entity, applicant also includes (i) the parent, subsidiary, or other affiliate of the applicant, (ii) a partner, officer, director, member, or manager of the business entity, parent, subsidiary, or other affiliate of the applicant, and (iii) any person with a direct or indirect interest in the applicant, other than a minority shareholder of a publicly traded corporation who has no involvement in management or control of the corporation or any of its parents, subsidiaries, or affiliates.

(2) "Unaffiliated adjacent property" means a property (i) for which the applicant does not have, and has not had, an ownership interest and (ii) that is not subject to a permit issued pursuant to this section that also governs the property for which the new permit is sought.

(3) As used in this section, the words "affiliate," "parent," and "subsidiary" have the same meaning as in 17 Code of Federal Regulations § 240.12b-2.

(c8) The Department shall rescind a permit issued under this section without the consent of the permit holder where the permitted development has not been initiated within five years after the date of permit issuance. No less than 90 days prior to rescission, the Department shall notify the permit holder of its intent to rescind the permit and allow the permit holder 60 days in which to respond and request an extension of the permit.

(d) The Commission shall review each stormwater management program submitted by a State agency or unit of local government and shall notify the State agency or unit of local government that submitted the program that the program has been approved, approved with modifications, or disapproved. The Commission shall approve a program only if it finds that the standards of the program equal those of the model program adopted by the Commission pursuant to this section.

(d1) Repealed by Session Laws 2013-265, s. 19, effective July 17, 2013.

(d2) Repealed by Session Laws 2008-198, s. 8(a), effective August 8, 2008.

(e) On or before October 1 of each year, the Department shall report to the Environmental Review Commission on the implementation of this section, including the status of any stormwater control programs administered by State agencies and units of local government. The status report shall include information on any integration of stormwater capture and reuse into stormwater control programs administered by State agencies and units of local government. The report shall be submitted to the Environmental Review Commission with the report required by G.S. 113A-67 as a single report. (1989, c. 447, s. 2; 1995, c. 507, s. 27.8(q); 1997-458, s. 7.1; 2004-124, s. 6.29(a); 2006-246, s. 16(b); 2007-323, s. 6.22(a); 2008-198, s. 8(a); 2011-256, s. 1; 2011-394, s. 6; 2012-200, ss. 1, 6; 2013-121, s. 1; 2013-265, s. 19; 2013-413, ss. 51(a), 57(h); 2014-90, s. 2; 2014-115, s. 17; 2014-120, s. 45(a); 2015-149, s. 1(a); 2015-286, s. 4.20(b); 2017-10, ss. 3.12, 4.15(b); 2017-104, s. 2; 2017-211, s. 8; 2018-145, s. 26(a), (b); 2021-158, s. 4(a); 2021-164, s. 1(b); 2021-189, s. 4.7; 2023-108, s. 13.1(a); 2023-134, s. 12.12(a); 2023-137, s. 2.)