

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 2, 2006

SUBJECT: UPDATE ON PHASE II NPDES STORM WATER PROGRAM

ATTACHMENTS: PAGE 1- CERTIFICATION
PAGE 2- MAY 30, 2006 DWQ LETTER
PAGE 4- PAGE 2 FROM STATE REGULATION
PAGE 5- MAP OF URBANIZED AREA
PAGE 6- EMAIL FROM PAUL MEYER, COUNTY
COMMISSIONERS ASSOCIATION

SUMMARY OF REQUEST: There have been two developments in recent weeks concerning the Phase II NPDES Storm Water Program.

The first deals with interpretations by the Division of Water Quality, DWQ, concerning Henderson County Facilities. During February 2003, the County submitted to the N.C. Division of Water Quality the Certification (attachment page 1) that the County does not own or operates any Municipal Storm Water Systems (MS4's). This was based on the fact that the County does not own roads and those instructions, given by the Division of Water Quality (DWQ) at that time, that individual site storm sewer systems would not be covered under the Phase II NPDES Storm Water Program.

On May 30, 2006 a site visit was made by Mike Randall, Environmental Engineer, with the DWQ, and Laurie Morehead with the Asheville DWQ office. The County Engineer took them on a tour of County owned facilities. A letter was received from DWQ also dated May 30 but received in late June; outlines that in Mike's opinion that the County should apply for a Phase II NPDES permit for various facilities in the County. His interpretation is that since individual sites have storm sewers that are County owned that these sites are MS4's under the rule.

In review of the regulation (attachment page 4), our interpretation of the rule is that individual sites are not defined as a MS4 and would not be regulated under the rule and would not require an NPDES Permit. Staff is in the process of responding to the DWQ Letter.

The second development is that legislation has been introduced that would require the State to enforce the Phase II requirements not only on the Urbanized Area, (see attachments page 5), but throughout the entire unincorporated areas of the County. Paul Meyer, Attorney for the County Commissioners Association, has provided information by email (see attachment page 6) that outlines the new legislation.

As result of this legislation, the State would be enforcing the Phase II NPDES Permit requirements throughout the unincorporated areas of the County.

Staff will be present to discuss this matter with the Board.

COUNTY MANAGER'S RECOMMENDATION/ACTION REQUIRED:

This item has been placed on the Board's agenda for discussion. However, the Board may choose to take action based staff's presentation.

**State of North Carolina
Department of Environment & Natural Resources
Division of Water Quality**

OFFICE USE ONLY	
Date Rec'd	
BIMS	
Cert. Number	

STORMWATER NON-OWNERSHIP / NON-OPERATION CERTIFICATION FORM

This form is for use by Regulated Public Entities (RPE), pursuant to Title 15A North Carolina Administrative Code 2H .0126, to certify that they do not own or operate a small MS4.

I. APPLICANT STATUS INFORMATION

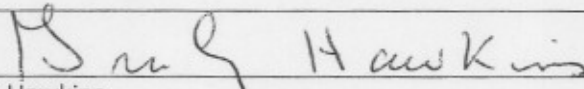
Name of Regulated Public Entity	Henderson County
Status (federal, state, public, or other)	Local Government
Type of Public Entity (city, town, county, prison, school, etc.)	County
County(s)	Henderson
RPE Jurisdictional Area in square miles	353

II. OPTIONAL PERMITTING OPPORTUNITIES

Are you exercising your option to apply for a NPDES Stormwater Discharge Permit? If yes, submit this form along with a complete application package (Form SWU-264 and a Comprehensive Stormwater Management Program Report).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are exercising your option to apply for Permit by Rule status? If yes, submit this form along with a completed form SWU-267	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

III. SIGNING OFFICIAL'S STATEMENT

I certify, under penalty of law, that the Regulated Public Body listed in Section I of this document does not currently own or operate a small municipal separate storm sewer system, as defined in 40 CFR 122. I further certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Signature	
Print Name	Grady Hawkins
Title	Chairman, Henderson County Board of Commissioners
Street Address	101 North King Street
PO Box	
City	Hendersonville
State	North Carolina
Zip	28792
Telephone	828-697-4808
Fax	828-698-6014
E-Mail	ctymgr@hendersoncountync.org



Michael F. Easley, Governor
 William G. Ross Jr., Secretary
 North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P. E. Director
 Division of Water Quality
 Coleen H. Sullins, Deputy Director
 Division of Water Quality

May 30, 2006

Steve Wyatt
 County Manager
 Henderson County
 101 North King Street
 Hendersonville, NC 28792

SUBJECT : Compliance Evaluation Inspection
 NPDES Stormwater Phase II
 Henderson County

Dear Mr. Wyatt:

On May 30, 2006 Laurie Moorhead of the Asheville Regional Office and I met with Gary Tweed of your staff to evaluate the status of an exemption request by Henderson County from a National Pollutant Discharge Elimination System (NPDES) Phase II stormwater permit. Mr. Tweed was very cooperative and helpful in reviewing some of the county-owned facilities that lie within the Asheville urbanized area.

Our findings indicate that Henderson County must seek NPDES Phase II stormwater permit coverage for the following facilities we visited on May 30:

- Henderson County Courthouse Complex
- Henderson County Health Department
- Jackson Park

Henderson County does have the option of seeking NPDES Phase II stormwater permit coverage from Hendersonville, Laurel Park, or Fletcher for any county-owned facilities located within their respective jurisdictions. Hendersonville, Laurel Park, or Fletcher have all been issued Phase II Permits addressing the 6 minimum measures as specified by the Environmental Protection Agency and as described in the respective local municipality's NPDES Phase II stormwater permit. As such, documentation of cooperation and subsequent permit coverage could include a memorandum of agreement between the municipality and County or an adopted resolution by the appropriate city council.

Henderson County must seek NPDES Phase II stormwater permit coverage from the Division of Water Quality for Jackson Park. Additionally, the County is required to evaluate all other county-owned facilities that lie within the Asheville urbanized area to determine whether other county-owned properties require permit coverage. It is recommended that all county-owned facilities requiring permit coverage be included in one single permit.

The Henderson County Landfill is required to have an NPDES Phase I stormwater permit as established under a 1990 federal mandate. Although, this requisite is separate and distinct from the County's required NPDES Phase II stormwater permit for its other county-owned facilities located within the Asheville urbanized area, Henderson County does have the option of seeking NPDES Phase II stormwater permit coverage for the Henderson County Landfill, Jackson Park, and other county-owned properties that require permit coverage under a single Phase II stormwater permit.

Permit application forms for both NPDES Phase I and Phase II stormwater (Henderson County Landfill, Jackson Park and other applicable sites) coverage may be found at our website:

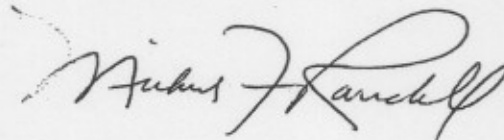
http://h2o.enr.state.nc.us/su/Forms_Documents.htm

Applications and fee shall post-marked no later than November 1, 2006 and addressed to me at:

Mike Randall
Stormwater Permitting Unit
Division of Water Quality
1617 Mail Service Center, Raleigh, NC 27699-1617

Thank you for your attention to this matter. Should you have any questions related to this inspection or the application/permit process please feel free to contact me at 919/733-5083, extension 545.

Sincerely,



Mike Randall
Environmental Engineer

cc: Gary Tweed, County Engineer
NPS-ACO Unit
Stormwater Permitting Unit files
Central Files
DWQ Asheville Regional Office

1 authorized Indian tribal organization, or a designated and approved management agency under
 2 section 208 of the Clean Water Act (CWA) that discharges to waters of the United States or waters
 3 of the State.

- 4 (ii) Designed or used for collecting or conveying stormwater;
 5 (iii) Which is not a combined sewer; and
 6 (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
- 7 (f) 1-year, 24-hour storm means the surface runoff resulting from a rainfall of an intensity expected to be
 8 equaled or exceeded, on average, once in 12 months.
- 9 (g) Population Density means the population of an area divided by the area's geographical measure in
 10 square miles, equal to persons per square mile. For the purposes of this definition, the population shall
 11 equal the sum of the permanent and seasonal populations, or be calculated from a measure of housing
 12 unit density.
- 13 (h) Public Entity means the United States, State of North Carolina, city, village, township, county, school
 14 district, public college or university, single purpose governmental agency; or any other governing body
 15 which is created by federal or state law.
- 16 (i) Redevelopment means any rebuilding activity other than a rebuilding activity that;
 17 (i) Results in no net increase in built-upon area, and
 18 (ii) Provides equal or greater stormwater control than the previous development.
- 19 (j) Significant Contributor of Pollutants means an MS4 or a discharge that,
 20 (i) Contributes to a pollutant loading(that may reasonably be expected to adversely effect the quality
 21 and uses of a water body; or
 22 (ii) Destabilizes the physical structure of a water body such that the discharge may reasonably be
 23 expected to adversely effect the quality and uses of that water body.

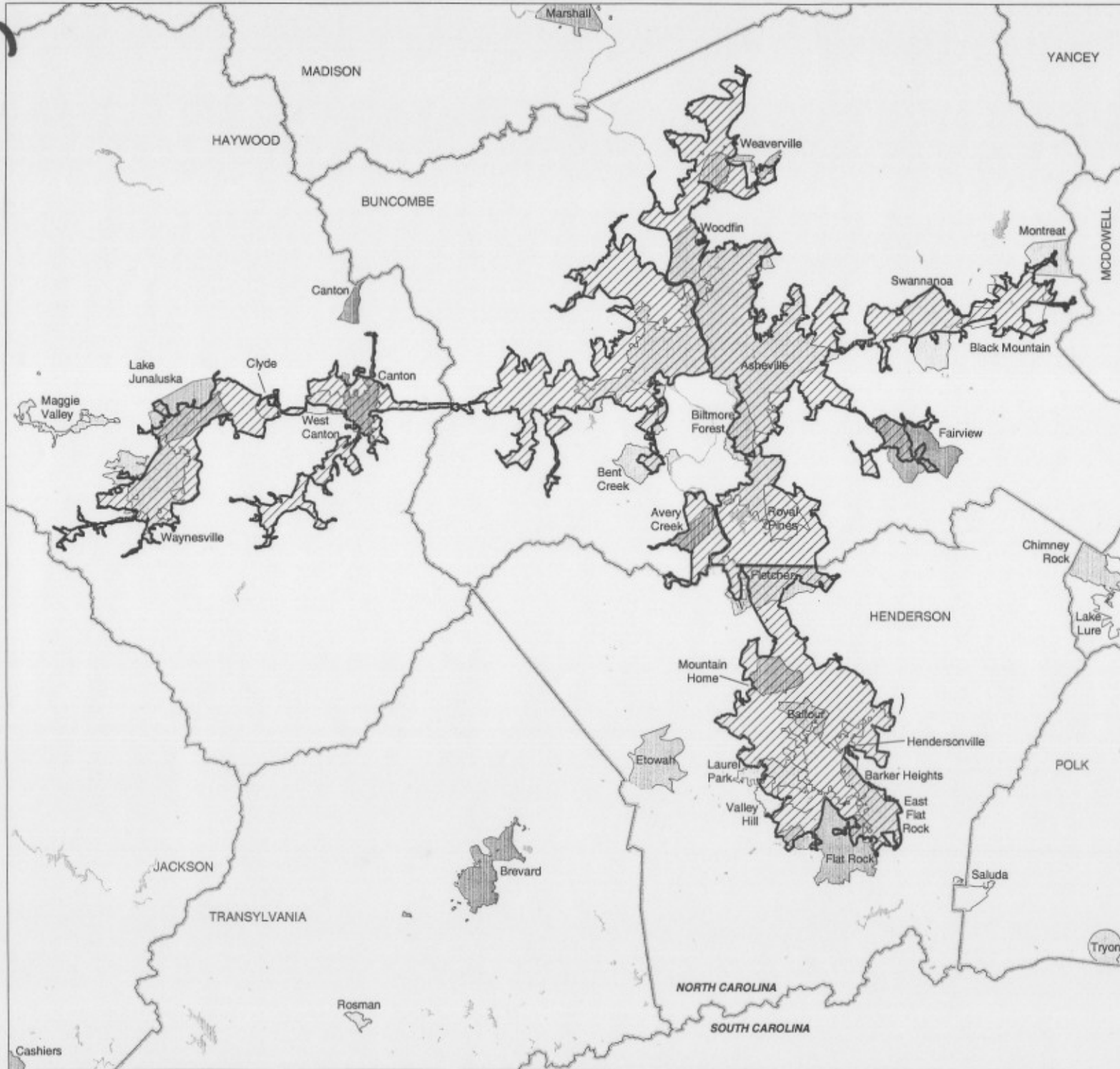
24 Uses of the waters shall be determined pursuant to 15A NCAC 2B .0211 - .0222 and 15A NCAC 2B
 25 .0300.

- 26 (k) Small Municipal Separate Storm Sewer System (small MS4) pursuant to 40 CFR 122.26(b)(16) means
 27 all separate storm sewer systems that are:
 28 (i) Owned or operated by the United States, a State, city, town, county, district, association, or other
 29 public body (created by or pursuant to State law) having jurisdiction over disposal of sewage,
 30 industrial wastes, stormwater, or other wastes, including special districts under State law such as a
 31 sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an
 32 authorized Indian tribal organization, or a designated and approved management agency under
 33 section 208 of the CWA that discharges to waters of the United States.
 34 (ii) Not defined as "large" or "medium" MS4s pursuant to 40 CFR 122.26(b), or designated under
 35 Sub-Item (2)(b) of this Rule.





36 This term includes systems similar to separate storm sewer systems in municipalities, such as systems
 37 at military bases, large hospitals or prison complexes, and highways and other thoroughfares. The
 38 term does not include separate storm sewer systems in very discrete areas, such as individual buildings.

Asheville, North Carolina Urbanized Area

Storm Water Entities as Defined by the 2000 Census



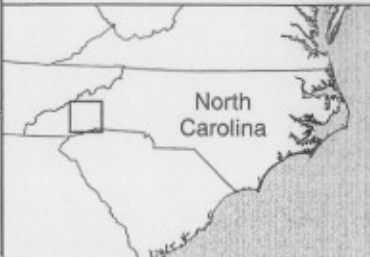
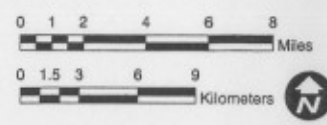
2000 Census Urbanized Areas

-  Asheville
-  Municipal Boundaries
-  County Boundaries
-  Major Waterbodies

SOURCE:
US Census Bureau TIGER data, 2000 Census.

PROJECTION:
State Plane Coordinate System: North Carolina
Horizontal datum- NAD83.

MAP DESIGN:
August 12, 2002



Dear county managers impacted by new Phase II Stormwater legislation ("full county" provisions):

Please be advised that S1566, "Stormwater Management of 2006" (Sen. Clodfelter, Mecklenburg) was approved yesterday by the Senate Agriculture/Environment/Natural Resources Committee. This bill converts the Phase II stormwater management post-construction requirements coverage areas from **partial county to full county**, in counties where 75 percent of the total geographic area of the county is already subject to any stormwater management programs administered by DENR, or in counties where an urbanizing area exists, and the county 10-year population growth rate exceeds the average state growth rate during 1995-2004. **The Phase II post-construction regulations and permitting will apply throughout the entirety of your county under the provisions of S1566, should the bill become law.**

Under S1566, developments disturbing one acre or more of land in your county will be required to obtain a Phase II post construction permit, either from DENR – which is administering the Phase II program in the unincorporated portion of the county – or a delegated county program, if you opt to administer one. S1566 does not change the fact that DENR will be administering the Phase II program in the unincorporated portions of the county, unless the county opts for a locally delegated program.

If you are concerned about the tipping of your county to full county coverage, it is in your interest to contact your legislative delegation. The chart below indicates the status of individual counties impacted by S1566.

Stormwater Coverage Based on Proposed Bill Language (S1566) – Section 4(a)(4) and (5)
Prepared by the Division of Water Quality
11 July 2006

County	Percent of county covered by stormwater programs	Growth rate (1995-2004)	Tipped? ²
BRUNSWICK	100.0%	38%	YES
DURHAM	100.0%	19%	YES
FRANKLIN	100.0%	26%	YES
NASH	100.0%	9%	YES
NEW HANOVER	100.0%	21%	YES
ONSLOW	100.0%	8%	YES
PITT	100.0%	18%	YES
EDGECOMBE	99.9%	-6%	YES
ALAMANCE	99.9%	16%	YES
CUMBERLAND	99.4%	4%	YES
MECKLENBURG	99.2%	29%	YES
ORANGE	99.0%	13%	YES
GUILFORD	97.9%	13%	YES
WAKE	97.4%	37%	YES
WAYNE	91.4%	4%	YES
CATAWBA	90.6%	15%	YES
FORSYTH	87.7%	12%	YES
GASTON	86.9%	5%	YES
CABARRUS	68.1%	31%	YES

CHATHAM	54.9%	25%	YES
HENDERSON	48.6%	21%	YES
UNION	39.2%	51%	YES
HARNETT	39.1%	27%	YES
DAVIE	36.4%	25%	YES
RANDOLPH	29.4%	16%	YES
HOKE	19.4%	37%	YES
STATE		16%	

County Population data from Office of State Demographer - demog.state.nc.us

¹ Includes: Water Supply, NPDES-subject municipality boundaries, MSIs, Urbanized Areas, State Stormwater Program (Coastal Counties + ORW + HQW waters), Neuse & Tar-Pam, and all NSW sub-basins

² Counties "tipped in" are those where 75% or more of the county is covered by a stormwater program and any county with a 10 year growth rate equal or greater than the average state growth rate over the same time period

If you have any questions, please feel contact to Paul Meyer at the Association at (919) 715-4369, or e-mail: paul.meyer@ncacc.org.