



Update on the Progress of 605 Working Group for the Coastal Stormwater Rule

Introduction: Since the commencement of the Coastal Stormwater Rule Working Group on April 23, 2008, the Department of Environment and Natural Resources has agreed too many significant compromises and changes to the proposed rule language.

These changes are summarized below:

Threshold for Coverage – This was one of the most controversial issues. As the rule was originally written all non-residential and residential development in the 20 Coastal Counties that “disturbed” more than 10,000 square feet would have been affected by the original rule in some manner. This was a significant issue because it changed the current threshold from the current one acre of disturbed area. This was controversial due to the fact that more projects would now be captured especially smaller scale commercial projects and because of the subjectivity involved in determining what constitutes 10,000 square feet of disturbance. In response to the stakeholder’s arguments, DENR proposed changing the threshold for permit coverage to the following:

- **Non-residential Development:** Projects that will add 10,000 square feet **of new impervious surface.**
- **Residential Development within ½ mile of shellfishing waters:** Projects that will add 10,000 square feet of new impervious surface or projects that require a Sedimentation and Erosion Control Plan or a CAMA Major Permit.
- **Residential Development outside of ½ mile of shellfishing waters:** Only projects that require a Sedimentation and Erosion Control Plan or a CAMA Major Permit. (This is the existing threshold.)

This compromise is very significant for several reasons: 1) The current threshold in the existing rule is the requirement for a Sedimentation and Erosion Control Plan or a CAMA Major Permit. By making this compromise DENR has proposed retaining the current threshold for all residential development outside of ½ mile of shellfishing waters. The threshold will be extended to new residential development within ½ mile of shellfishing waters and to all non-residential development that adds 10,000 square feet of new impervious surface, but this is justified due to the high potential of non-residential

projects to impact the environment and due to the fact that 10,000 square feet of new impervious surface for a residential project within ½ mile of shellfishing waters represents a very large residential development close to our most sensitive waters that should be required to take some preventative measures. 2) This compromise is also significant because it will be very easy to measure 10,000 square feet of new impervious surface, so this removes all the subjectivity involved in determining what projects will be covered under the new rule.

Exclusion of Wetlands from Impervious Surface Calculations: This was, perhaps, the most controversial issue of the rulemaking that led to many concerns and charges that the Department was trying to “take” people’s property. As the Rule was originally written all wetlands (isolated wetlands, jurisdictional wetlands, and CAMA Wetlands) were to be excluded from impervious surface calculations (the calculations used to determine which projects are low and high density).

The compromise proposed by the Department is that only CAMA-Jurisdictional Wetlands (coastal marsh) will be excluded from impervious surface calculations under the new rule. This is significant because the CAMA Wetlands are not only the most valuable wetlands, but they only comprise about 10 to 25% of the wetlands in the Coastal Counties. This means that property owners will be able to include the other 75 to 90% of all of their wetlands in their impervious surface calculations.

Requirement for 12 inches of naturally occurring soils for infiltration: As the rule was originally written, there was a requirement for 12 inches of natural soil between the surface of the ground and the top of the high water table if infiltration was going to be employed to control and treat the stormwater runoff. This led to many concerns, particularly in Pamlico County, that this requirement for 12 inches of naturally occurring soil would make many sites with a high water table unsuitable for development. In response, the Department has proposed removing the requirement for 12 inches of natural soil from the Rule and replacing with a mandatory 2 feet of separation. The key behind this language is that naturally occurring soils were taken out.

Use of Wet detention Pond within ½ Mile of Shellfishing Waters: The Department has restored language to the proposed rule that will allow the use of wet detention ponds as a stormwater control device within ½ mile of shellfishing waters. However they also have inserted language that requires a secondary BMP to be installed. Currently the division is allowing this BMP in the buffer area.

Exclusions / Grandfathering Provisions: The Department has proposed a comprehensive set of exclusions, or grandfathering provisions, for the new rule. These include:

- Any project that has already received any of the list of authorizations contained in the Section 8 of the Phase 2 Session Law. (These are the Phase 2 exclusions.)
- Any project that already has a State Stormwater Permit or Stormwater Certification.

- Any project that already has a complete permit application in-house with DWQ. (BASE NOTE: We are still in the process of getting DWQ to define completed application)
- Any redevelopment that does not increase the amount of impervious surface coverage.
- Any project that already has a CAMA Major Permit.

Buffer Exemptions: The Department has proposed to provide an exemption to the setback, or buffer, requirements in the new Rule for the following projects:

- Urban waterfront projects. (The need for this exemption has been raised repeatedly.)
- Projects that qualify for most of the CAMA Buffer exemptions.
- Upland marinas.

In addition, the Department has included language that will allow all wetlands to be included in the measurement of the buffer. These issues were largely overlooked in the first version of the rules passed by the EMC, and would have definitely hampered if not stopped all waterfront development and working waterfronts.

Pockets of High Density: The Department has made a significant concession regarding the regulation of “pockets of high density.” Under the existing rule, projects that have an overall impervious surface density that is under the low density threshold, but have concentrated areas of development are subject to having those concentrated areas of development classified as a “pocket of high density.” Under existing policies DWQ often requires structural stormwater controls for the control and treatment of the stormwater runoff from a pocket of high density, even though the overall project is classified as a low density project. Under the proposed changes to the new Coastal Stormwater Rule, the Department has proposed modified language that will ensure that under the new rule pockets of high density in low density developments will not be required to install structural stormwater controls. This is a substantial concession on the part of the Department and provides the regulated community with a change that they have been actively seeking for some time.

Stormwater Control requirement for Limited Residential Development: Under the original rule language, new residential development that is within ½ mile of shellfishing waters and adds 10,000 square feet or more of new impervious surface would have been required to control and treat all the rooftop runoff for the 1-year, 24-hour storm (approximately 3.5 inches of rain). At first the department did not require a permit which opened up all sorts of loopholes, now there will be a one time non-renewable permit that is required. The Department also has now proposed to only require the control and treatment of the rooftop runoff from the first 1.5 inches of rain for this limited residential development. This constitutes a substantial reduction of the amount of water and related BMP’s that were going to have to be used.

Rescission of Phase 2 Designations for certain Municipalities: The Department has agreed to language that would rescind the EMC designation of Morehead City, Atlantic

Beach, and Washington as Phase 2 municipalities. This does not take away any of the designations of the areas from the 1990/2000 census.

Other Changes: The Department has also proposed adding several definitions and making other clarifications that have been requested by the regulated community and local governments.