

**Summary of SL 2015-241 (HB 97) - 2015 Appropriations Act
Enacted 9/18/2015
Impact on DEMLR's Sediment Program
Compiled by Tracy Davis**

Joint Conference Committee Report (Money Report):

a) **Page H-8, Item 35 – Operating Reduction:**

Reduces the budgets for certain operating line items throughout the department on a recurring basis in the amount of \$1 million

Plan of Action: DEMLR total appropriation operating cost cut = \$89,592; individual program cuts are 1730 DEMLR Admin = \$689, 1735 NCGS = \$12,502, 1749 Energy = \$15,597, and 1740 LQS = \$60,804

b) **Page H-10, Item 43 – Position Reduction (1730):**

Eliminates filled Rules Coordinator position (1.0 FTE, \$51,027) which was created to coordinate the development of shale gas rules

Plan of Action: DEMLR used vacant SEP position and multi-program funding to retain DEMLR Rules Coordinator employee to assist with rule making, grant and contract review, legislative studies, etc. for all programs across DEMLR

Special Provisions:

a) **Page 206 – Erosion Control Structures:**

Coastal Resources Commission shall amend its rules to allow use of temporary erosion control structures for various situations and adopt temporary rules no later than 12/31/2015 and permanent rules thereafter

Plan of Action: DEMLR Land Quality Section needs to provide technical assistance to Division of Coastal Management staff on appropriate temporary erosion control structures

b) **Page 236 - Reform Civil Penalties under the Sedimentation Pollution Control Act:**

Page 236 & 237 - The Sedimentation Control Commission is authorized to make the final decision on a request for the remission of a civil penalty; request for remission must be received within 60 days of receipt of the assessment (appeal of penalties to OAH must be received within 30 days); remission requests must include waiver of the right to a contested case hearing and stipulation of the facts on which the assessment was based; the SCC has several factors it shall consider in determining whether the penalty remission request will be approved; petitioner has burden of proof of showing financial impact of the penalty and its financial hardship; SCC may remit the entire amount of the penalty only when petitioner has not been assessed penalties for prior violations and payment of the penalty will prevent payment for necessary remedial action; SCC may not impose a higher penalty than assessed by DEMLR

Plan of Action: DEMLR Land Quality Section and local programs must notify violators of this remission option and the deadline date to request remission in the letter accompanying the civil penalty assessment – see attached civil penalty assessment cover letter, Justification for Remission Request, and Assessment Factors shell documents

Page 236 - When a person has not been assessed a civil penalty for a previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the NOV, the maximum cumulative total civil penalty assessed for all violations associated with the land disturbing activity for which the E&SC plan is required is \$25,000

Plan of Action: DEMLR Land Quality Section and local programs must search CP databases for prior record and, if no prior CP, notify first time violators of the date of the deadline to abate continuing environmental damage resulting from the violation in order to be subject to the maximum penalty – see attached civil penalty assessment cover letter

Page 237 – If a person has not received a previous notice of violation, DEMLR, local programs or other approving authority shall deliver the NOV in person and shall offer assistance in developing corrective measures; assistance may be provided by referral to a technical assistance program in DEQ, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents; if the regulatory entities are unable to deliver the NOV in person within 15 days following discovery of the violation, the NOV may be served by certified mail and shall include information on how to obtain assistance in developing corrective measures

Plan of Action: DEMLR Land Quality Section and local programs will need to maintain and check databases of NOVs issued before issuing NOVs; if a violator has not been issued an NOV, a reasonable attempt to hand deliver the NOV in person within 15 days of the site inspection must be made before sending the NOV by certified mail:

- a) LQS plans to contact owners to meet onsite or at the regional office to discuss the results of the inspection and the terms of the NOV – when accomplished with actual owner, documentation of such interaction will be placed in the file
- b) LQS plans to contact out of state owners to meet onsite or at regional office as noted above, but if not available and sends local agent to do so, documentation of such interaction will be placed in the file AND the NOV will be sent certified to the actual owner on the 14th day so that it is delivered on or as soon after the 15th day after the site inspection (to ensure proper service)

Other 2015 Legislative Actions Impacting DEMLR's Sediment Program

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SL 2015-90 (HB 795), 6/19/2015 - SEPA Reform:

- a) SEPA now applies to projects using more than \$10 million of state funds or disturbs 10 contiguous acres or more; there is a list of exemptions, including utility lines, DWR certifications, coal closure activities, etc.

Plan of Action: DEMLR LQS to evaluate state funded projects for SEPA review under these new thresholds

SL 2015-263 (SB 513), 9/30/2015 – NC Farm Act of 2015:

- a) Exempts activities to restore wetland functions of converted wetlands to provide compensatory mitigation from the Sedimentation Pollution Control Act, including activities undertaken by NRCS standards

Plan of Action: DEMLR LQS cannot require an E&SC plan for such activities

- b) Amends the definition of mining relative to agricultural activities by exempting excavation or grading when conducted solely for activities undertaken on agricultural land that are exempt from the SPCA (borrow pits providing material to ag exempt sites)

Plan of Action: While such activities are not covered under the Mining Act, they will be covered by the SPCA if not agriculturally exempt themselves

- c) Exempts contagious disease control activities from environmental permitting (permitted by rule)

Plan of Action: Land disturbing activities associated with animal composting are exempt from E&SC plan; however, DEMLR participating on DEQ HPAI response team to advise Dept. of Agriculture and Dept. of Crime Control and Public Safety on best management practices to prevent environmental impacts

SL 2015-286 (HB 765), 10/22/2015 – Regulatory Reform Act:

- a) No fiscal note required for less stringent rules

Plan of Action: If a rule is readopted without substantive changes or amended to impose less stringent burden, no fiscal note required

- b) Environmental Self Audit Privilege and Limited Immunity established to encourage operators to conduct voluntary internal compliance audits and improve compliance while protecting the confidentiality of communications relating to such audits; self-audit report not admissible in CPA proceedings and is considered privileged unless waived (what agency finds and other items are admissible and not privileged); operator must notify agency within 10 working days of agency inspection that privileged self-audit exists and the begin and end date of such audit; an agency can seek motion for declaratory ruling to remove privilege if several criteria apply; burden of proof for privilege lies with the operator and the burden of proof for disclosure lies with agency; operator may voluntarily disclose self-audit report and receive waiver of CPA after agency certifies violation corrected within reasonable time (but audit is now a public record); if compliance not timely, agency retains discretion to assess penalties; voluntary disclosure must be made to appropriate agency within 14 days of self-discovery of the violation, must initiate action to resolve violation in diligent manner, cooperates with agency in its investigation, and pursue compliance and corrects violation in reasonable time period; there is a list of

non-voluntary disclosures (monitoring records required by permit, willful violations, significant threat to public, violation within one year of prior privileged audit, substantial economic benefit to owner, etc.); can exercise privilege once in a two year period, not more than twice in a five year period, and not more than three times in a ten year period; no preemption by local laws allowed

Plan of Action: DEQ must submit Part 7D of Chapter 8 (this ESAP statute) to EPA within 30 days of enactment to gain EPA approval of such provisions for federal programs administered in NC; DEQ must report to ERC by 12/1/2015 on its progress in gaining EPA approval and every month thereafter until EPA approves this provision; this provision becomes effective upon the date of approval by EPA

- c) DEQ study the impacts of exempting construction, maintenance, and removal of linear utility projects from any DEQ and most Commission established environmental regulations; "linear utility project" means an electric power line, water line, sewage line, stormwater drainage line, telephone line, cable television line, data transmission line, communications-related line, or natural gas pipeline.

Plan of Action: DEMLR LQS programs need to coordinate with other DEQ Divisions/programs to document impacts and justification for environmental requirements and report such to ERC by 3/1/2016