

**Report to the North Carolina General Assembly
Environmental Review Commission**



***Report on the Directive to Seek Approval from EPA to
Streamline Implementation of the Sedimentation
Pollution Control Act and Federal Construction
Stormwater Requirements***

August 1, 2024

**Division of Energy, Mineral and Land Resources
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Pursuant to SL 2023-108, Section 11

The purpose of this report is to provide a status update regarding DEQ's activities pursuant to Session Law 2023-108, Section 11.

Section 11 reads as follows:

DIRECT DEQ TO SEEK APPROVAL FROM USEPA TO STREAMLINE IMPLEMENTATION OF REQUIREMENTS OF THE SEDIMENTATION POLLUTION CONTROL ACT AND FEDERAL REQUIREMENTS FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

SECTION 11. No later than September 1, 2023, the Department of Environmental Quality shall develop a plan for submittal to USEPA that eliminates any program redundancies between the State's Sedimentation Pollution Control Act of 1973 (Act), and its implementation of requirements for stormwater discharges from construction activities set forth under the 2022 Clean Water Act National Pollution Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities (Construction Permit), 87 Federal Register 3522, through NPDES General Permit NCG010000 (NCG01). Specifically, the plan shall include measures to streamline permitting requirements to ensure persons conducting land-disturbing activity are required to apply for one permit addressing all federal, State, and local requirements, and, if applicable, that permit may be issued by a local government with delegated authority to operate a local program in order to eliminate (i) unnecessary costs to, and duplication of efforts by, persons initiating land-disturbing activities, (ii) unnecessary delays in project development, and (iii) inefficient use of Department personnel and staff of local governments that administer delegated erosion and sedimentation control programs. The Department shall report to the Environmental Review Commission on the status of their activities pursuant to this section quarterly, beginning August 1, 2024, until such time as the General Assembly repeals this reporting requirement.

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A. Background

Presently and since April 2019, the Division of Energy, Mineral and Land Resources (Division or DEMLR) has maintained an electronic Notice of Intent (eNOI) application process whereby responsible entities for land disturbing and construction activities can apply for and obtain coverage under the Division's NPDES Construction Stormwater General Permit subsequent to receiving approval of an Erosion & Sedimentation Control (E&SC) Plan through either a DEMLR Regional Office or delegated local program. The eNOI application is submitted and reviewed through the Division's Raleigh Central Office and requires input of relevant project information and upload of applicable E&SC Plan documentation (e.g. Letter of Approval, Financial Responsibility/Ownership Form, site map, NOI Certification Form). The eNOI application is reviewed for completeness and accuracy within 1-3 business days. Upon approval of the eNOI, the applicant is informed of approval and provided with instruction to make payment. Once payment is processed, a Certificate of Coverage under the NPDES Construction Stormwater General Permit is issued. The relevant Session Law has directed the Division to seek approval from the EPA to streamline the current dual application process to eliminate any duplication of efforts by responsible entities. Furthermore, the Session Law has directed the Division to inquire about Construction Stormwater General Permit issuance by local governments delegated to administer an erosion and sedimentation control program. The Session Law also dictates that the Division reports to the Environmental Review Commission on the status of their activities pursuant to the Session Law quarterly beginning August 1, 2024.

B. DEMLR's Communication with EPA

In compliance with the applicable Session Law, a letter dated December 19, 2023 was addressed and sent to Mike Mitchell and Cesar Zapata with EPA Region 4 (included as Attachments). The letter summarized the Session Law directive, summarized the current process for obtaining erosion & sedimentation control approval and construction stormwater permit coverage, and outlined proposals to streamline the process for obtaining both erosion & sedimentation control approval and construction stormwater permit coverage to reduce redundancies. Two proposals were presented, the details of which may be reviewed in the included letter. In short, Proposal A would allow applicants to apply simultaneously for both erosion & sedimentation control plan approval and construction stormwater permit coverage through a single review process and DEMLR would simultaneously issue a combined erosion control plan approval and construction stormwater permit Certificate of Coverage to the applicant. Proposal A also includes that local governments with delegated authority to issue erosion control plan approvals would gain authority to issue Certificates of Coverage under the NPDES Construction Stormwater requirements. Proposal B references DEQ's Permit Transformation Program (PTP), which is already underway for all regulatory programs within the Department. DEMLR is in the final stages of developing a platform whereby applicants going through the State would apply for both erosion control plan approval and construction stormwater permit coverage through a single online application. For applicants obtaining erosion control plan approval through a delegated local program, they would need to separately apply to DEMLR for construction stormwater permit coverage.

DEMLR received a written response from EPA, dated March 18, 2024, which provided their analysis of the two proposals summarized above. While EPA had no objections to the simultaneous application process under Proposal A for applicants submitting through DEMLR, they noted that the approach of local governments with delegated authority to issue erosion control plan approval to also issue construction stormwater permit coverage "...conflicts with NPDES regulations because...only the state agency authorized by EPA to implement the NPDES permitting program may issue the CoC." With respect to Proposal B, EPA noted "This approach appears to comply with all NPDES requirements. As noted above, it would be DEMLR's responsibility to ensure that the procedure chosen for conferring coverage under the CGP aligns with the terms of the CGP and modify the CGP to the extent necessary."

C. Permit Transformation Program (PTP)

In the fall of 2023, NCDEQ launched a new online erosion and sedimentation control application for DEMLR as part of the Department's new AccessDEQ digital hub. The platform allows applicants to submit and track the status of their erosion control plan for review and approval. The next step, which is in progress, is to combine erosion control and construction stormwater permitting into a single online application submittal process for our clients. The anticipated timeline for implementation of the combined application submittal process is the fourth quarter of 2024.

D. Streamlined Plan

DEMLR's current plan, in compliance with EPA requirements, is to continue moving forward with the next step in the PTP to develop and finalize a combined online application process for applicants to receive erosion control plan approval and construction stormwater permit coverage. While it is not possible to combine the two permits themselves due to the distinction between a state (SPCA) and federal (NPDES) program, combining the application, will streamline the process and reduce/prevent duplicative efforts by the developers.

For areas of the state where developers submit erosion control plans to delegated local programs, developers will have to submit to the local program and then submit their erosion control approval documentation, along with a few additional materials as required by the NPDES eReporting criteria, through DEMLR's online application process to obtain construction stormwater permit coverage.

DEMLR examined a process that would have had local governments directly submit their approved erosion control documentation through the online portal, but that process would require additional staffing and would actually slow down the permitting process for developers. In line with the legislation, we have elected to continue with the faster, more streamlined option as described above.

E. Future Updates

DEMLR is awaiting final release of the PTP construction stormwater portal in the coming months. We will continue to provide updates to the legislature as this comes online. Upon the release, applicants seeking both erosion control approval and construction stormwater permit coverage from DEMLR will be able to submit a combined online application and track the progress of their application. This streamlined process will save time for developers as well as DEQ staff, and we are grateful to the NCGA for providing the funds needed for this change and the full PTP.

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

WILLIAM E. TOBY VINSON, JR.
Interim Director



December 19, 2023

Mr. Mike Mitchell
US Environmental Protection Agency
61 Forsyth Street SW
Atlanta GA 30303

As required in North Carolina Session Law 2023-108, Section 11, the North Carolina Department of Environmental Quality's Division of Energy, Mineral, and Land Resources (DEMLR) is writing to request certain new permissions from the United States Environmental Protection Agency (EPA). The North Carolina General Assembly has directed the Department to seek to eliminate redundancies between the state requirements for Erosion and Sediment Control (ESC) plan approvals and Certificates of Coverage (COC) under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit.

In this letter, we will begin by summarizing the current process for obtaining the two required approvals. We will also summarize a previous report that examined possible redundancies between the federal and state requirements. We will then describe two proposals for changes to these processes, in line with Session Law 2023-108. We are requesting that EPA first consider whether Proposal A is acceptable. If EPA determines that this proposal is unacceptable, we request that EPA consider an alternative, Proposal B. We recognize that there may be other options to meet legislative intent, and we would welcome any other options or information that EPA can provide that would allow us to meet the requirements of Session Law 2023-108.

Current Process: State Requirements

Under North Carolina's Sedimentation Pollution Control Act of 1973 (G.S. 113A, Article 4), construction activities that disturb an acre or more of land, or that are part of a common plan of development that is one acre or larger, require an ESC plan approval. To obtain this approval, applicants must provide an appropriately engineered plan outlining the procedures and measures sufficient to contain sedimentation on site. This plan is reviewed and approved either by DEMLR or by a local ESC program delegated to a local government by NC's Sedimentation Control Commission. This ESC plan approval satisfies the requirements under state law.

Current Process: Federal Requirements

These construction activities, however, must also meet federal requirements by obtaining a COC under the NPDES Construction Stormwater General Permit. DEMLR has delegated authority from EPA to issue this COC in compliance with federal law. However, applicants do not need to



develop a new engineering plan to obtain this COC. While federal law does require that applicants provide a Stormwater Pollution Prevention Plan (SWPPP) to obtain a COC, DEMLR has worked with the EPA to ensure that the engineering plan that applicants submit to obtain an ESC plan approval can also be used to satisfy the SWPPP requirement for the COC.

As such, the next step in the process is for the applicant to apply for a COC by providing DEMLR with the ESC plan approval letter (issued by a local government or DEMLR) along with some additional required information. Based on this, DEMLR can issue a COC under the NPDES Construction Stormwater Permit to applicants. DEMLR is currently the only entity in North Carolina that can provide applicants with the COC needed to meet federal requirements. Once they have obtained the COC and the ESC plan approval, applicants have satisfied both state and federal requirements.

Previous Evaluation of Possible Redundancies

In preparation for contacting the EPA, DEMLR utilized the NC General Assembly Program Evaluation Division's (PED) September 1, 2022 "Report to the North Carolina General Assembly's Environmental Review Commission" of our programs which listed identified redundancies. The report references the PED's 2019-02 report which identifies the two programs, Erosion and Sediment Control and NPDES Construction Stormwater, as complementary to one another. The only duplication identified by the PED was the requirement to submit the same applicant and project information for both the ESC plan approval and the COC. Additionally, the report also communicated the regulated community's desire to have both permits packaged together for a more expeditious permit review and issuance process.

Requested Changes: Proposal A

In order to reduce redundancies in line with Session Law 2023-108, DEMLR requests that EPA accept the following set of process changes, which we will describe collectively as "Proposal A." First, we propose that applicants be allowed to apply simultaneously for both the ESC plan approval and a COC under the NPDES Construction Stormwater Permit. The combined application would allow for a single review process that covers both state and federal requirements. Once the review is complete, DEMLR could simultaneously issue a combined ESC plan approval and COC to the applicant.

Secondly, Session Law 2023-108 directs DEQ to seek authority to allow this combined ESC and COC application and review process to be managed by "a local government with delegated authority to operate a local program." In line with this, we are proposing that local governments with delegated authority from the State to issue ESC plan approvals be automatically allowed to utilize a single process to also issue both ESC plan approvals and COCs under the NPDES Construction Stormwater Permit. As such, all local ESC programs would automatically gain authority to issue COCs under federal NPDES Construction Stormwater requirements by virtue of their delegation as local ESC programs.



Requested Changes: Proposal B

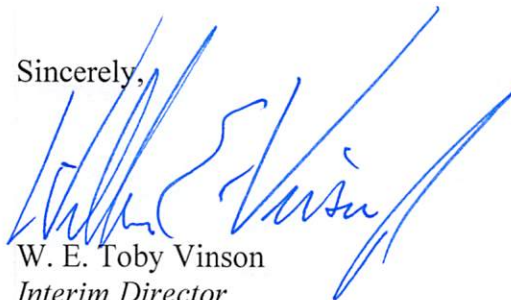
If Proposal A is unacceptable to the EPA, we request that EPA find acceptable an alternative process change laid out below, which we will refer to as "Proposal B." As part DEQ's Permit Transformation Program (PTP) process, underway for all regulatory programs in the Department, DEMLR is in the final stages of developing an online platform that would allow applicants to apply for both an ESC plan approval and a COC through a single online application. This process would separate the state (ESC) and federal (COC) applications on the back end and allow DEMLR to conduct separate reviews to ensure both state and federal requirements are met, but applicants would only have to complete a single application on the front end. Unlike in Proposal A, DEMLR would separately issue the ESC plan approval and the COC to the applicant, in line with the respective review timelines for each.

All applicants submitting projects to DEMLR for review would be eligible to use this online platform. This system would also allow applicants that have been issued an ESC plan approval from a delegated local ESC program to apply online to DEMLR for a COC. However, applicants in those jurisdictions would still have to separately apply to the local program for ESC Approval and later to DEMLR to receive a COC.

In line with Session Law 2023-108, DEMLR requests that EPA first consider Proposal A. If EPA determines that this proposal is unacceptable, we request that EPA consider an alternative, Proposal B. DEMLR would also welcome any additional guidance or proposals from EPA regarding implementation of the goals outlined by the General Assembly in Session Law 2023-108.

We welcome the opportunity to meet to discuss these requests further. Please feel free to reach out to me at 919-707-9201 or via email at toby.vinson@deq.nc.gov. We thank you for taking the time to consider our requests and look forward to your response.

Sincerely,



W. E. Toby Vinson

Interim Director

Division of Energy, Mineral, and Land Resources

North Carolina Department of Environmental Quality

cc: Sushma Masemore, Assistant Secretary for Environment, NC Department of Environmental Quality
Bill Lane, Deputy Secretary for Policy & Legal Affairs/General Counsel, NC Department of Environmental Quality
Shrikar Nunna, Director of Legislative Affairs, NC Department of Environmental Quality



ROY COOPER
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ELIZABETH S. BISER
Secretary

WILLIAM E. TOBY VINSON, JR.
Interim Director



December 19, 2023

Mr. Cesar Zapata
Acting Director, Water Division
US EPA Region 4
61 Forsyth Street, SW
Atlanta GA 30303 -3104

As required in North Carolina Session Law 2023-108, Section 11, the North Carolina Department of Environmental Quality's Division of Energy, Mineral, and Land Resources (DEMLR) is writing to request certain new permissions from the United States Environmental Protection Agency (EPA). The North Carolina General Assembly has directed the Department to seek to eliminate redundancies between the state requirements for Erosion and Sediment Control (ESC) plan approvals and Certificates of Coverage (COC) under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit.

In this letter, we will begin by summarizing the current process for obtaining the two required approvals. We will also summarize a previous report that examined possible redundancies between the federal and state requirements. We will then describe two proposals for changes to these processes, in line with Session Law 2023-108. We are requesting that EPA first consider whether Proposal A is acceptable. If EPA determines that this proposal is unacceptable, we request that EPA consider an alternative, Proposal B. We recognize that there may be other options to meet legislative intent, and we would welcome any other options or information that EPA can provide that would allow us to meet the requirements of Session Law 2023-108.

Current Process: State Requirements

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develop a new engineering plan to obtain this COC. While federal law does require that applicants provide a Stormwater Pollution Prevention Plan (SWPPP) to obtain a COC, DEMLR has worked with the EPA to ensure that the engineering plan that applicants submit to obtain an ESC plan approval can also be used to satisfy the SWPPP requirement for the COC.

As such, the next step in the process is for the applicant to apply for a COC by providing DEMLR with the ESC plan approval letter (issued by a local government or DEMLR) along with some additional required information. Based on this, DEMLR can issue a COC under the NPDES Construction Stormwater Permit to applicants. DEMLR is currently the only entity in North Carolina that can provide applicants with the COC needed to meet federal requirements. Once they have obtained the COC and the ESC plan approval, applicants have satisfied both state and federal requirements.

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Requested Changes: Proposal A

In order to reduce redundancies in line with Session Law 2023-108, DEMLR requests that EPA accept the following set of process changes, which we will describe collectively as "Proposal A." First, we propose that applicants be allowed to apply simultaneously for both the ESC plan approval and a COC under the NPDES Construction Stormwater Permit. The combined application would allow for a single review process that covers both state and federal requirements. Once the review is complete, DEMLR could simultaneously issue a combined ESC plan approval and COC to the applicant.

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Requested Changes: Proposal B

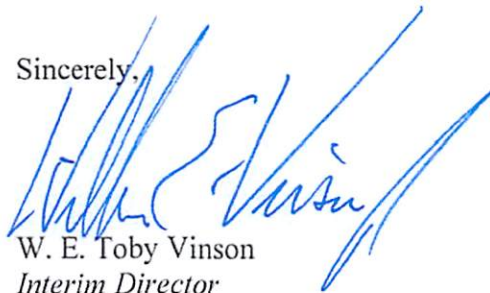
If Proposal A is unacceptable to the EPA, we request that EPA find acceptable an alternative process change laid out below, which we will refer to as "Proposal B." As part DEQ's Permit Transformation Program (PTP) process, underway for all regulatory programs in the Department, DEMLR is in the final stages of developing an online platform that would allow applicants to apply for both an ESC plan approval and a COC through a single online application. This process would separate the state (ESC) and federal (COC) applications on the back end and allow DEMLR to conduct separate reviews to ensure both state and federal requirements are met, but applicants would only have to complete a single application on the front end. Unlike in Proposal A, DEMLR would separately issue the ESC plan approval and the COC to the applicant, in line with the respective review timelines for each.

All applicants submitting projects to DEMLR for review would be eligible to use this online platform. This system would also allow applicants that have been issued an ESC plan approval from a delegated local ESC program to apply online to DEMLR for a COC. However, applicants in those jurisdictions would still have to separately apply to the local program for ESC Approval and later to DEMLR to receive a COC.

In line with Session Law 2023-108, DEMLR requests that EPA first consider Proposal A. If EPA determines that this proposal is unacceptable, we request that EPA consider an alternative, Proposal B. DEMLR would also welcome any additional guidance or proposals from EPA regarding implementation of the goals outlined by the General Assembly in Session Law 2023-108.

We welcome the opportunity to meet to discuss these requests further. Please feel free to reach out to me at 919-707-9201 or via email at toby.vinson@deq.nc.gov. We thank you for taking the time to consider our requests and look forward to your response.

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