

Report on Environmental Express Permitting Expansion and Legislative Recommendations

Statutory Authority: Session Law 2021-117, Section 3

Due Date: March 1, 2022

Receiving Entities:

Environmental Review Commission
Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources
Fiscal Research Division

Submitting Entity:

NC Department of Environmental Quality

Express Permitting

Purpose

Session Law 2021-117, Section 3 requires the Department of Environmental Quality (DEQ or the Department) to study and report on any necessary budgetary or legal changes to expand the Department's express permitting programs to include additional types of permits required for economic development related activities. The mandate directed the Department to specifically study two permit types: water quality non-discharge permits and land application of petroleum contaminated soil.

This report details DEQ's study of the Express Permitting Program and outlines legislative recommendations for consideration.

Background

The Express Permitting Program was first authorized in 2005 budget bill (S.L. 2005-276, Section 12.2a) to offer a timelier fee-based review process for certain types of environmental permits required for economic development. Through pre-application meetings and consultations, the program works directly with applicants to identify necessary environmental requirements to expeditiously process permits and certifications. To support additional staff necessary for an express review, higher fees are charged.

The statute directed the Department's focus and allowed it to establish a fee-based express review for any or all of the permits, approvals or certifications in the following programs:

- Erosion and Sedimentation Control
- Coastal Management
- Water Quality, including water quality certifications and stormwater management.

Statute further allowed the Department to determine the fees for express application review under the Express Permitting Program but provided a statutory maximum allowed to be charged. Statute then laid out a schedule for maximum permit fees depending on the number of permits a project required.¹ Note – the term project is not defined.

Current Express Review Programs

DEQ currently offers four permit types in the Express Permitting Program. The majority of all express permits are processed in the Division of Energy, Mineral, and Land Resources (DEMLR), including both Erosion and Sedimentation Control and State Stormwater permits. The Division of Water Resources (DWR) and the Division of Coastal Management (DCM) also offer express permitting options. Table 1 provides an overview of the total express permits issued in FY 2020-21 in comparison to the total number of permits processed in the Division's regular permitting process.

¹ See <https://deq.nc.gov/media/8743/download>

Table 1. Overview of Express Permits Issued in FY 2020-21

Division	Program	Express	Regular
DEMLR	Erosion and Sediment Control	541	2,049
DEMLR	State Stormwater	99	860
DWR	401/Wetlands	16	2,228
DCM	CAMA Major	0	115
TOTAL	All Permits w/ Express	656	5,252

From the 656 total express permits that were issued in FY 2020-21, \$1,054,135 was generated in receipts. These receipts support 11.512 FTE within the regulatory Divisions, as well as operating expenses in the regional offices.

Economic Development Stakeholder Consultation

In response to the legislative study directive, DEQ took several steps to research the types of permits most frequently requested from economic developers. The Department surveyed regional office permit coordinators, located within our Division of Environmental Assistance and Customer Services to obtain feedback on the needs of permittees and their experience. Additionally, the Department met with staff from both the NC Department of Commerce (NCDOC) and Economic Development Partnership of NC (EDPNC) and received input related to this subject. Findings from both internal and external stakeholders indicate that this program is very popular with economic developers, and relayed the desire for additional options, as well as flexibility within existing permits. NCDOC and EDPNC recommended several competitor states for further study for comparison to make sure that the Department is offering similar options.

DEQ analyzed surrounding states' programs and others that were recommended. No state had an express review program as broad and diverse as North Carolina. Of the states reviewed, Massachusetts offers wetlands expedited review, and both Texas and Georgia offer an expedited air permitting feature.

Directed Permits for Study

Legislation required DEQ to study two specific types of permits for consideration for inclusion in the Express Review program. The following information explains why the Department does not advise pursuing either of these options:

Water Quality Non-Discharge Permits

DWR's Non-Discharge Branch is responsible for the permitting and compliance of treated wastewater effluent and residuals applied to land surface. The Branch is also responsible for permitting facilities for the beneficial use of reclaimed water for the purpose of conserving the state's potable water, surface water, and groundwater resources. Non-discharge wastewater systems do not include "onsite" septic tank drain field systems; those systems are overseen by local Health Department and the Department of Health and Human Services. Table 2 lists types of non-discharge permits and approved disposal methods.

Table 2. Water Quality Non-Discharge Permit Types and Disposal Methods:

Non-Discharge Permit Types	Non-Discharge Disposal Methods
Wastewater Irrigation Single-Family Residence Wastewater Irrigation High-Rate Infiltration Other Non-Discharge Wastewater Land Application of Class B Residuals Distribution of Class A Residuals Surface Disposal of Residuals Closed-Loop Recycle Reclaimed Water Generation Reclaimed Water Dedicated Utilization Reclaimed Water Conjunctive Utilization Bulk Distribution of Reclaimed Water Reclaimed Water Distribution Reclaimed Water Local Program Approval	Spray/Drip Irrigation High-Rate Spray/Drip Infiltration High-Rate Basin Infiltration High-Rate Rotary Infiltration Closed-Loop Recycle Reclaimed Water Reuse Reclaimed Water Irrigation Injection/Application of Residuals

Non-Discharge permits are issued for a period not to exceed eight years. In 2021, the Department issued 221 permits: 14 new permits, 29 major modifications, 50 minor modifications, and 128 renewals. G.S. 143-215.1(d)(1) requires that all complete non-discharge permits be issued within a 90-day deadline. Since 2016, no complete applications have exceeded the 90-day statutory requirement for processing. As such, this section does not have a backlog.

Recommendation: DEQ does not recommend this program for the Express Review Program as completed permits are processed within the required 90-day period. If the legislature wants to include an express permitting option, DEQ requests that adequate permitting staff be appropriated so as not to impact the existing non-discharge program and its ability to meet statutory requirements.

Land Apply Petroleum Contaminated Soils G.S. 143-215.1d(2)

The Underground Storage Tank (UST) soil remediation sites were identified in SL 2021-117 as one area for DEQ to study express permitting. An applicant wishing to dispose of petroleum contaminated soil by land application is required to give a written notice that they intend to apply for such a permit to each city and county government having jurisdiction over any part of the land on which disposal is proposed to occur.

There are currently 21 sites across NC that manage petroleum contaminated soils. Five of these locations are containment and treatment operations while the others are land farms (apply petroleum contaminated soils to land) that vary in size from a few acres to over 80 acres. These sites are issued 5 year permits at a cost of \$480 per site. Regional UST staff with DWM currently process these permits in an expedited manner.

Recommendation: An express permitting option is not recommended at this time based on the limited number of these sites across the state and the quick turnaround that is typically associated with most of these permits.

Additional Permits Studied

Based on feedback from economic development professionals and with internal regional permit coordinators, *the Department studied and recommends the following additional permits and certifications for inclusion in the Express Permitting program:*

DEMLR – Jurisdictional Determinations for Dams

DEMLR operates the State Dam Safety Program. As a part of administrative rule requirements, an applicant that wishes to construct, repair, alter or remove a dam must file with the Director a statement concerning the location of the dam, including the name of the stream and county, height, purpose, and impoundment capacity including proposing a hazard classification. The review process for a jurisdictional determination (JD) for hazard classification requires considerable staff time and resources due to tabletop and onsite review. Most of the 6,099 existing dams in the state inventory have an assigned hazard classification. However, proposed dams and any dam owner wishing to have their existing hazard classification changed for any reason is required to have a JD.

The following chart provides permit volume data for calendar years 2020-2021 compared to data from the previous three years. Within the last fiscal year, the Division experienced a caseload almost equal to the prior three years of requests. As a result of the rise in demand, processing times have also increased.

Table 2. Comparative Permit Data by Calendar Year for Dam Safety Jurisdictional Determinations

	DEMLR	
	Dam Safety Jurisdictional Determinations	
	2020-2021	2017-2019
Number of JDs	106	139
Average (days)	165	94
Goal (days)	30	30
Number > 90 days	68	77
% > 90 days	64%	55%

The law does not currently authorize a base fee for this review. With current workloads increasing in this program, a voluntary fee-based option would allow for expedited review of JDs. Although obtaining a JD in and of itself is not a permit or approval, it is an initial step in the Dam Safety permitting process that should be considered for addition to our existing Express Review system.

DWR – Sewer Systems Extension

The DWR issues sewer extension permits for expansion, relocations, or installation of new sewer lines and systems. The permitting process provides sewer services to new locations while

ensuring that appropriate setbacks are maintained, pump stations are sized appropriately, and the downstream sewer line/pump stations/wastewater plant can handle the hydraulic load and properly treat wastewater. Additionally, the permitting process addresses conditions that may cause or contribute to sanitary sewer overflows over the lifespan of a sewer system. In the 2021 calendar year, 1,090 total sewer system extension permits were issued.

DEQ would recommend adding sewer system permits to the Express Permitting Program. This new option would not be applicable for alternative sewers, projects requiring flow adjustments under 02T administrative rules, or standard sewer extensions that do not meet the 02T rules and current Minimum Design Criteria.

Other Considerations

In reviewing the Express Permitting program, the Department identified the following items for further consideration:

Division of Coastal Management - CAMA Major Permit

The Division of Coastal Management (DCM) is responsible for issuing CAMA Major Permits. These permits include major construction projects like beach renourishment, inlet dredging, marinas, and large-scale shoreline construction projects. Major permits are classified as such, in part, because they require the review and action of up to nine additional state entities and four federal agencies. DCM provides an umbrella permitting process, where the CAMA permit application serves as the application for other federal and state authorizations. Given the more complex reviews involved in these permits and the Division's reliance on expedited processing by other state and federal agencies outside of its control, this program is not a good fit for the Express Program. In fact, only four permits have been issued through the express program in the last three years – a volume that can easily be absorbed through the regular permitting program by expediting the processing of time-sensitive projects without requiring an Express permit application.

Recommendation: Eliminate CAMA Major permits from the Express Program.

Statutory Fee Cap

G.S. 143B-279.13(b) establishes a maximum fee schedule for certifications and permits. Unfortunately, the statute vacillates between two terms: permit applications and project applications— neither of which are defined. The Department recommends streamlining this section to eliminate ambiguity and to simplify the fee schedule. The Department also requests that consideration be given to increase the maximum allowable fee to an amount that better reflects the cost of the services provided. The current fee per permit is currently capped at \$4000, which adjusted for inflation to today's dollars, would equal \$5,710. Any increases in revenues generated would allow the Department to add additional staff to grow this permitting program and best serve economic development.

Recommendation: Adopt statutory language to streamline the fee schedule and increase the maximum allowable fee per permit or certification to a maximum fee of \$5,500. See the Appendix for recommended statutory changes.

Summary

The Express Permitting program is a tool for enabling faster processing of permits related to economic development. Although studied, DEQ does not recommend either the addition of Non-discharge permits or permits for the Land Application of Petroleum Contaminated Soils to the Express Permitting program. However, the Department does recommend the addition of Jurisdictional Determinations of Dams and Sewer System Extensions. Additionally, DEQ recommends eliminating CAMA Major permits as an express permitting option and increasing the maximum fee allowed in statute to better reflect the real cost of processing the permits, which in turn, with additional receipts, will allow the program to continue to grow to serve an increased demand.

Appendix

Changes requested:

- Create a single \$5,500 cap per permit, not per project and get rid of the tiered pricing. \$5,500 is based on rate of inflation.
- Give DEQ the clear authority to add additional express permitting options

§ 143B-279.13. Express permit and certification reviews.

(a) The Department of Environmental Quality shall develop an express review program to provide express permit and certification reviews in all of its regional offices. Participation in the express review program is voluntary, and the program is to be supported by the fees determined pursuant to subsection (b) of this section. The Department of Environmental Quality shall determine the project applications to review under the express review program from those who request to participate in the program. The express review program may be applied to any one or all of the permits, approvals, or certifications in the following programs: the erosion and sedimentation control program, the coastal management program, and the water quality programs, including water quality certifications and stormwater management. The express review program shall focus on the following permits or certifications:

- (1) Stormwater permits under Part 1 of Article 21 of Chapter 143 of the General Statutes.
- (2) Stream origination certifications under Article 21 of Chapter 143 of the General Statutes.
- (3) Water quality certification under Article 21 of Chapter 143 of the General Statutes.
- (4) Erosion and sedimentation control permits under Article 4 of Chapter 113A of the General Statutes.
- (5) Permits under the Coastal Area Management Act (CAMA), Part 4 of Article 7 of Chapter 113A of the General Statutes.

(a1) The Department of Environmental Quality shall have the authority to create additional express permitting options in other programs not enumerated in (a) where it deems there to be a need or where it determines an express permitting option would create greater efficiencies for the permitting process.

(b) The Department of Environmental Quality may determine the fees for express application review under the express review program. Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged under subsection (a) of this section for the express review of a project application requiring all of the permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed five thousand five hundred dollars (\$5,500) per permit, approval or certification. ~~Notwithstanding G.S. 143-215.3D, the maximum permit application fee to be charged for the express review of a project application requiring all of the permits under subdivisions (1) through (4) of subsection (a) of this section shall not exceed four thousand five hundred dollars (\$4,500). Notwithstanding G.S. 143-215.3D, the maximum permit application fee charged for the express review of a project application for any other combination of permits under subdivisions (1) through (5) of subsection (a) of this section shall not exceed four thousand dollars (\$4,000). Express review of a project application involving additional permits or certifications issued by the Department of Environmental Quality other than those under subdivisions (1) through (5) of subsection (a) of this section may be allowed by the Department, and, notwithstanding G.S. 143-215.3D or any other statute or rule that sets a permit fee, the maximum per permit application fee charged for the express review of a project application under subsection (a1) of this section shall not exceed four thousand dollars (\$4,000), plus one hundred fifty percent (150%) of the fee that would otherwise apply by statute or rule for that particular permit, approval or certification. Additional fees, not to exceed fifty percent (50%) of the original permit application fee under this section, may be charged for subsequent reviews due to the insufficiency of the permit applications. The Department of Environmental Quality may establish the procedure by which the amount of the fees under this subsection is determined,~~

and the fees and procedures are not rules under G.S. 150B-2(8a) for the express review program under this section.

(c) Repealed by Session Laws 2008-198, s. 10.2, effective August 8, 2008. (2005-276, s. 12.2(a); 2008-198, s. 10.2; 2015-241, s. 14.30(u).)

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