

DEMLR Response to Public Comments on the Draft NCG250000 Permit

The NCG250000 is a new NPDES Stormwater Industrial General Permit that has a planned effective date of October 1, 2020. This permit applies to point source conveyance of stormwater runoff from construction activities including clearing, grading, and excavation activities that meet all three of the following criteria:

- result in the disturbance of land greater than or equal to one acre, or that are part of a common plan of development of that size or greater;
- are not subject to the North Carolina Sedimentation Pollution Control Act of 1973 (SPCA); and
- are subject to the Clean Water Act (i.e., activities that meet the definition of point source under 40 CFR 122.2 and are not excluded from the Clean Water Act under 40 CFR 122.3.)

For example, activities that could be subject to the NCG25 permit include, but are not limited to, industrial mulching operations and federal projects subject to North Carolina's NPDES Industrial Stormwater Program under the Clean Water Act. This permit does not cover exempt agricultural stormwater runoff under 40 CFR 122.2 and 122.3.

The draft NCG250000 permit has been out to public notice twice. The first public notice was from September 4, 2018 to October 5, 2018. The comments that DEMLR received resulted in changes that the agency believed were significant enough to merit a public notice of the second draft of the permit. The second public notice ran from July 15, 2020 to August 14, 2020.

A summary of the comments received and DEMLR's responses appears below. The NCG250000 permit has been signed and will go into effect on October 1, 2020.

Comment: Under the Clean Water Act, "agricultural stormwater discharges" are not "point sources," and thus runoff that is agricultural does not require an NPDES Stormwater permit.

Response: Under 40 CFR 122.2, the definition of "point source" specifically excludes "agricultural storm water runoff" as described in 40 CFR 122.3(e).

Comment: Based on the long-standing practice of NCDEQ to maintain exemptions from permitting for stormwater runoff from agricultural activities, we understand that this practice will continue.

Response: DEQ has no intention of changing its past practices with respect to the agricultural exemption.

Comment: It would be helpful if the Department would provide written confirmation that poultry production is exempt from the NPDES Construction Permit requirement.

Response: It is DEMLR's intent that this response to comments document will provide written confirmation that agricultural stormwater runoff, including that from poultry operations, will continue to be interpreted as exempt from the NPDES Construction Permit requirement so long as the operations are exempt under the Clean Water Act.

Comment: The NC General Assembly made it clear in G.S. 113A-52.01 that they did not intend that persons conducting land disturbing activities on agricultural and silvicultural land, including construction activities for agricultural and silvicultural purposes, be required to prepare, seek approval of, and implement and Erosion and Sedimentation Pollution Control Plan.

Response: The NPDES permitting program is required to meet the requirements of the federal Clean Water Act, not state laws and rules. The purpose of this new permit is to address construction projects that are subject to the Clean Water Act but not subject to the NC Sedimentation Pollution Control Act. However, based on the NC DEQ's current legal interpretation of the Clean Water Act, certain land disturbing activities on agricultural and silvicultural land, including construction activities for agricultural and silvicultural purposes are not subject to NPDES stormwater permitting requirements.

Comment: DEMLR should adhere to the plain text definition of "silvicultural point source" in 40 CFR 122.27(b)(1) and avoid expanding or interpreting this term into other activities that are not specifically delineated in the federal rule's language.

Response: DEMLR intends to adhere to the language in 40 CFR 122.27(b)(1) in its determination of which silvicultural point sources are subject to the NCG250000 permit.

Comment: It is recommended that DEMLR develop an approved easy-to-prepare template for an acceptable Erosion & Sedimentation Control / Stormwater Pollution Prevention Plan. This template could be used for stormwater permits if the project meets certain criteria, such as acreage thresholds, distance to water features, limited slopes, certain soil types, etc. Requiring that every E&SC/SWPPP be prepared by a Professional Engineer could dramatically increase the timeline and costs beyond the scope of a small project.

Response: As the reviewing agency, DEMLR only has the authority to review and approve E&SC Plans, not to design them. However, DEMLR staff are available to answer questions and provide technical support. In addition, DEMLR offers a number of publications to assist with E&SC Plan design and maintenance, which are available at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permit-guidance/demlr-publications>. Please note that there is not a requirement in the NC250000 permit for E&SC/SWPPPs to be prepared by a Professional Engineer.