

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



***Report on the Study of Erosion and Sedimentations Control  
Requirements Relative to Federal Requirements Applicable to  
Stormwater Discharges from Construction Activities***

**September 1, 2022**

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

**Pursuant to SL 2022-11, Section 7**

The purpose of this report is to present the findings from the Department of Environmental Quality’s study of the Sedimentation Pollution Control Act of 1973 (SPCA) and N.C.’s National Pollutant Discharge Elimination System (NPDES) General Permit for Construction Stormwater NCG010000 (NCG01) in accordance with and pursuant to Session Law 2022-11, Section 7.

Section 7. reads as follows:

**REQUIRE THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO STUDY EROSION AND SEDIMENTATION CONTROL REQUIREMENTS RELATIVE TO FEDERAL REQUIREMENTS APPLICABLE TO STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITIES**

**SECTION 7.** *The Department of Environmental Quality shall study the requirements of the Sedimentation Pollution Control Act of 1973 (Act) and federal requirements applicable to stormwater discharges from construction activities under 40 C.F.R. § 122.26 and shall identify all requirements of the Act that are more stringent than, or redundant to, federal requirements applicable to stormwater discharges from construction activities under 40 C.F.R. § 122.26. In so doing, the Department shall clearly identify the sources of federal law that establish specific requirements for (i) stormwater control design, installation, and maintenance at construction sites; (ii) permit applications to be submitted by operators of construction activity, including legal requirements for design and construction specifications to be included with permit applications; and (iii) transfer and termination of a builder, developer, or operator's obligations upon conveyance of property on which construction occurred. The Department shall report its findings, including recommendations for legislative action to streamline permitting of NCG01 applications, particularly any modifications to state sedimentation requirements that would result in a sedimentation and erosion control approval satisfying federal NCG01 permitting, to provide greater permitting efficiency within the regulated community, to the Environmental Review Commission no later than September 1, 2022.*

The Session Law requires the Department of Environmental Quality (DEQ) to provide three main components in the report:

1. Identify areas of the SPCA that are more stringent than or redundant to 40 CFR § 122.26.
2. Identify sources of federal law that establish specific requirements for items (i)-(iii) in the session law.
3. Provide recommendations for legislative action to streamline permitting of NCG01 applications.

The following sections will provide background on the federal requirements for construction stormwater and the SPCA and then address each of the three components listed above.

## Contents

A.	Background .....	3
B.	Comparative Stringency and Redundance .....	6
C.	Federal Law Requirements .....	9
D.	Recommendations .....	11

## A. Background

### Federal Requirements Applicable to Stormwater Discharges: Construction Stormwater Background

Congress passed the Federal Water Pollution Control Act of 1972 (Public Law 92-500, October 18, 1972) (hereinafter the “Clean Water Act” or “CWA”), 33 U.S.C. 1251 et seq., with the stated objectives to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” Section 101(a), 33 U.S.C. 1251(a). The CWA provides that “the discharge of any pollutant by any person shall be unlawful” except in compliance with other provisions of the statute. CWA section 301(a). 33 U.S.C. 1311.

The CWA defines “discharge of a pollutant” broadly to include “any addition of any pollutant to navigable waters from any point source.” CWA Section 502(12). 33 U.S.C. 1362(12). The U.S. Environmental Protection Agency (EPA) is authorized under CWA Section 402(a) to issue a National Pollutant Discharge Elimination System (NPDES) permit for the discharge of any pollutant from a point source.

These NPDES permits are issued by EPA regional offices or NPDES-authorized State or Tribal agencies. Since 1972, EPA and the authorized States have issued NPDES permits to thousands of dischargers, including industrial (e.g., manufacturing, energy and mining facilities) and municipal (e.g., sewage treatment plants) facilities.

As required under Title III of the CWA, EPA has promulgated Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for many industrial point source categories, and these requirements must be incorporated into NPDES permits. 33 U.S.C. 1311(b).

- The Water Quality Act (WQA) of 1987 (Public Law 100-4, February 4, 1987) amended the CWA, adding CWA section 402(p), requiring implementation of a comprehensive program for addressing stormwater discharges. 33 U.S.C. 1342(p).
- In 1990, pursuant to section 402(p)(4), EPA promulgated the Phase I stormwater regulations for those stormwater discharges listed in 402(p)(2). The Phase I regulations required NPDES permit coverage for discharges associated with industrial activity and from “large” and “medium” municipal separate storm sewer systems (MS4s). CWA section 402(p)(2).
- As part of that rulemaking, EPA interpreted stormwater “discharges associated with industrial activity” to include stormwater discharges associated with “construction activity” as defined at 40 CFR § 122.26(b)(14)(x). See 55 FR 48033-34.
- As described in the Phase I regulations, dischargers must obtain authorization to discharge (or “permit coverage”), including discharges associated with construction activity, such as clearing, grading, and excavation, if the construction activity:
  - will result in the disturbance of five acres or greater; or
  - will result in the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.See 40 CFR § 122.26(b)(14)(x) and (c)(1).
- Section 402(p)(5) and (6) establish a process for EPA to evaluate potential sources of stormwater discharges not included in the Phase I regulations and to designate discharges for regulation to protect water quality. Section 402(p)(6) instructs EPA to “issue regulations...which designate stormwater discharges, other than those discharges described in [section 402(p)(2)], to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources.”

- In 1999, pursuant to the broad discretion granted to the Agency under section 402(p)(6), and in response to a court remand in *Natural Resources Defense Council v. EPA*, 966 F.2d 1292, 1306 (9th Cir. 1992) (holding that EPA had failed to explain in its 1990 Phase 1 stormwater rule why stormwater discharges from construction sites disturbing less than five acres were not industrial in nature), EPA promulgated the Phase II stormwater regulations that designated discharges associated with “small” construction activity and “small” MS4s. 64 FR 68722 (December 8, 1999).
- NPDES permit coverage is required for discharges associated with “small” construction activity, including clearing, grading, and excavation, if the construction activity:
  - will result in land disturbance of equal to or greater than one acre and less than five acres; or
  - will result in disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

See 40 CFR § 122.26(b)(15).

### **Requirements of NC Sedimentation Pollution Control Act of 1973: Background and Application**

The Sediment Pollution Control Act (SPCA) of 1973 (N.C.G.S. §113A-50 through 69) is a performance-oriented law. It was created to prevent pollution by sedimentation while still allowing development within our state. The SPCA is the enabling legislation that gives authority to the Sedimentation Control Commission (SCC) and the Division of Energy, Mineral, and Land Resources - Land Quality Section (DEMLR) - Erosion and Sediment Control (E&SC) and NPDES Stormwater Programs. This law requires the installation and maintenance of sufficient erosion control practices to retain sediment within the boundaries of the site. It also requires that surfaces be non-erosive and stable during periods of inactivity and after completion of the activity. In certain high quality watersheds (HQW), this stabilization must be achieved sooner after completion of the activity and designed to a higher standard.

An erosion and sedimentation control (E&SC) plan must be submitted at least 30 days before land disturbance begins on any site involving over one acre in disturbance. The E&SC plan must be approved by the regulatory agency before any land-disturbing activities are begun. The E&SC plan requires a thorough evaluation of the site and the proposed land-disturbing activities in the planning phase of the development. The details and requirements for this plan are found in the SPCA, NCAC [Title 15A Chapter 4: Sedimentation Control and](#) Chapter 4 of the North Carolina Erosion and Sediment Control Planning and Design Manual ([E&SC Design Manual](#)). Primary requirements are as follows:

- A sufficient buffer zone must be retained or established along any natural watercourse or lake to contain all visible sediment to the first 25% of the buffer strip nearest the disturbed area. An undisturbed 25-foot buffer must be maintained along trout waters. [N.C.G.S. §113A-57(1)]
- The angle of cut-and-fill slopes must be no greater than that sufficient for proper stabilization. Graded slopes must be vegetated or otherwise stabilized within 21 calendar days of completion of a phase of grading. [ N.C.G.S. §113A-57(2)]
- Off-site sedimentation must be prevented, and a ground cover sufficient to prevent erosion must be provided. [N.C.G.S. §113A-57(3)]

The State assists and encourages local governments and other state agencies to develop their own E&SC programs. Local delegated programs, with technical support from DEMLR, play an important role in regulating construction activities across the state. The DEMLR - Land Quality Section (LQS) reviews [local programs](#) as needed to assure uniform enforcement of the SPCA. The State develops educational and

instructional materials to demonstrate methods and practices for erosion and sedimentation control. The State has developed a set of rules pertaining to sedimentation and erosion control. These rules were adopted as [Title 15A, Chapter 4](#) of the North Carolina Administrative Code.

### **National Pollution Discharge Eliminations Systems Construction Stormwater Requirements**

Federal regulations adopted by the EPA and N.C. Environmental Management Commission require an NPDES stormwater permit for land disturbances greater than or equal to one acre, or that are part of a common plan of development of that size or greater.

The NCG01 Construction Stormwater General Permit text contains the following Parts:

**Part I.** NCG01 Permit Coverage

**Part II.** Stormwater Pollution Prevention Plan (SWPPP)

- Required Components of the Stormwater Pollution Prevention Plan (SWPPP)
- Design and Construction Standards for Erosion and Sedimentation Control Measures
- Additional Design and Construction Standards in High Quality Water (HQW) Zones
- Construction Activity Buffers
- Ground Stabilization
- Materials Handling
- Operation and Maintenance

**Part III.** Self-Inspection, Record Keeping and Reporting

**Part IV.** Standard Conditions for NPDES Stormwater General Permit

- Compliance and Liability
- Permit Administration

**Part V.** Definitions

In North Carolina, the EPA has delegated authority to DEQ to administer the NPDES program. The E&SC plans, in keeping with the SPCA, are approved by DEMLR, or a delegated local program. The approved plans contain the core erosion control requirements for the subject construction site.

An E&SC plan approved by DEMLR or by a delegated local program for the subject project must be implemented as required by the SPCA. In addition, this plan is incorporated into the NCG01 as the SWPPP (**Part II.** Stormwater Pollution Prevention Plan (SWPPP) described above). Thereby, adherence to that E&SC plan is an enforceable component of the NCG01.

Prior to 2019, a project with an approved E&SC plan was considered deemed permitted under the NCG01 permit. The EPA recognizes the state of North Carolina's Erosion and Sediment Control Program as a vital component to our federal delegation obligations. However, in 2018, the EPA continued pressure on DEQ to modify the permitting process to require a separate application [Notice of Intent (NOI)] to gain coverage under the NCG01 in formal CWA Section 106 Grant conditions attached to the NPDES Enforcement and Compliance Monitoring Workplan for FY 2018-19 (dated 9/4/2018). Specifically, the agency was mandated to "submit the first batch of construction stormwater required permit and facility data from the application process to be implemented in December 2018." To provide context, North Carolina had not been meeting EPA's Electronic Reporting Rule Requirements in 40 CFR § 127 for the NCG01 since 2016.

In that year, the Electronic Reporting Rule established that basic permit data for NPDES-regulated entities were to be reported electronically to EPA. The state could not report those data prior to 2019 because Certificates of Coverage were never issued to construction site operators and tracked in agency databases, State or Local. That same rule outlines a second phase of implementation that requires General Permit NOIs to be electronically submitted in the near future. Our electronic NOI (eNOI) process has laid the groundwork for complete implementation of this requirement and was originally scheduled for completion by 2020 but extended to 2025.

To comply with the rule, DEQ began requiring separate applications for NCG01s in April 2019 through the NOI process. DEQ also began requiring additional detail sheets that could be included within the E&SC plan to satisfy the NCG01 permit requirements for ground stabilization, materials handling, self-inspections, record keeping, and reporting. This enabled the E&SC plan alone to satisfy the requirements of a SWPPP. DEQ will continue to work with EPA to find the most efficient permitting and reporting process to meet the requirements of the Electronic Reporting Rule.

A person seeking coverage under this permit shall take the following steps in the following order:

1. Develop an E&SC plan that adheres to the SWPPP requirements of this permit, the SPCA, and 15A NCAC 04B .0101-.0132. The North Carolina Erosion and Sediment Control Planning and Design Manual shall be used as guidance in meeting the applicable requirements.
2. Obtain approval of the E&SC plan by either DEMLR or the appropriate state delegated local entity (hereafter known as the "E&SC plan authority").
3. Submit an eNOI to DEMLR with documentation of the E&SC plan approval scanned and uploaded. The e-NOI is available at <https://deq.nc.gov/NCG01>. In addition, pay the general annual permit fee provided for in §143-215.3D.
4. Commence the construction activity after receipt of the Certificate of Coverage (COC).
5. Abide by the conditions of both the NCG01 construction stormwater permit and the E&SC plan until completion of the construction activity and establishment of permanent ground stabilization.
6. Contact the E&SC plan authority after construction is complete and the site is permanently stabilized to coordinate the final/close out inspection of the E&SC plan.
7. Submit an electronic Notice of Termination (eNOT) with a scan of the close-out inspection report uploaded. The eNOT is available at <https://deq.nc.gov/NCG01>.

The discharges allowed by this General Permit shall not cause or contribute to violations of North Carolina Water Quality Standards for surface waters and wetlands (15A NCAC 02B .0200). Discharges allowed by this permit must meet all applicable water quality certification or permit requirements as outlined in 15A NCAC 02H .0500 and 02H .1300. This permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree. This General Permit does not cover any other point source discharge to surface waters of the state, nor does it cover activities or discharges that are covered by an individual NPDES permit.

## **B. Comparative Stringency and Redundance**

### **Construction Stormwater Federal Requirements and Sediment Act requirements: Stringency and Redundance.**

#### *Stringency*

Certain aspects of the NCG01 and the federal requirements under 40 CFR § 122.26 are more stringent than the requirements set forth in the SPCA. For example, the SPCA requires ground cover in 21-days. The NCG01 requires ground stabilization in 7 and 14 days. Table 1 below lists the stabilization requirements in the NCG01.

**Table 1 – Ground stabilization requirements in the NCG01.**

Ground Stabilization Requirements		
Site Area Description	Stabilization	Timeframe Exceptions
 Perimeter dikes, swales, ditches and slopes	7 days	None
 High Quality Water (HQW) Zones	7 days	None
 Slopes steeper than 3:1	7 days	If slopes are 10' or less in length and are not steeper than 2:1, 14 days are allowed.
 Slopes 3:1 or flatter	14 days	7 days for slopes greater than 50' in length.
 All other areas with slopes flatter than 4:1	14 days	None, except for perimeters and HQW Zones.

Listed below are other select items from the NCG01 not required in the SPCA. These items are conditions/requirements in the NCG01.

- Monitoring and inspections\*: Self-inspections are required for E&SC Measures, stormwater discharge outfalls, site perimeter, and streams or wetlands at a frequency of at least once per 7 calendar days and within 24 hours of a rain event  $\geq 1.0$  inch in 24 hours.
- Rain gauge: A rain gauge is required to be maintained in good working order and data collected daily.
- Rainfall and inspection frequency\*: When a storm event of equal to or greater than 1.0 inch occurs outside of normal business hours, the self-inspection shall be performed upon the commencement of the next business day. Any occurrences where inspections were delayed shall be noted in the Inspection Record.

\*When adverse weather or site conditions would cause the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection.

- Record keeping:
  - E&SC Plan - The approved E&SC plan as well as any approved deviation shall be kept on the project site. The approved E&SC plan must be kept up-to-date throughout the coverage under this permit.
  - The monitoring records from the items noted above and E&SC plan shall be kept on site and available for inspection at all times during normal business hours.
- Additional documentation to be kept on site includes:
  - Copy of the General Permit;
  - Certificate of Coverage; and
  - Inspection records of inspections made during the previous twelve months.

The permittee shall record the required observations on the Inspection Record Form provided by the Division or a similar inspection form that includes all the required elements. Use of electronically available records in lieu of the required paper copies will be allowed if shown to provide equal access and utility as the hard-copy records.

- Document retention: All data used to complete the eNOI and all inspection records shall be maintained for a period of three years after project completion and made available upon request (40 CFR § 122.41). All data used to complete the eNOI and all inspection records shall be maintained for a period of three years after project completion and made available upon request (40 CFR § 122.41)
- Reporting: Permittees shall report the following occurrences:
  - Visible sediment deposition in a stream or wetland: The self-inspections required by this permit are an opportunity to identify impacts to nearby waters. If the permittee observes sediment that has deposited in a stream or wetland from the project site, the permittee must notify the appropriate DEMLR regional office within 24 hours and provide written notice within seven calendar days.
  - Reporting requirements for oil spill: Spills of oil that result in 25 gallons or more, that are less than 25 gallons but cannot be cleaned up within 24 hours, that cause sheen on surface waters (regardless of volume), or that are within 100 feet of surface waters (regardless of volume) must be reported to the appropriate DEMLR regional office within 24 hours.
  - Reporting for hazardous substances: Releases of hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act Ref: 40 CFR § 110.3 and 40 CFR § 117.3) or section 102 of CERCLA (Ref: 40 CFR § 302.4) or N.C.G.S. 143-215.85 must be reported to the appropriate DEMLR regional office within 24 hours.
  - Bypasses: Anticipated bypasses must be reported by the permittee at least 10 days before the date of the bypass, if possible. In the event of an unanticipated bypass, the permittee must notify the appropriate DEMLR regional office within 24 hours and provide written notice within seven calendar days.
  - Noncompliance: Noncompliance with the conditions of this permit that may endanger health or the environment must be reported to the appropriate DEMLR regional office within 24 hours.

#### *EPA Construction Stormwater General Permit – In Contrast*

In 2022, the EPA issued their revised federal NPDES Construction Stormwater General Permit. The federal Construction Stormwater General Permit can be used as a template by states with delegated NPDES programs or is implemented by the EPA in states that do not have NPDES delegation. This permit includes several requirements that are more restrictive than the SPCA and NCG01 requirements. A few examples of these requirements are listed below:

- Turbidity benchmark monitoring – Requires quantitative monitoring of turbidity from stormwater outfalls discharging to sensitive waters. Monitoring is required one time each day that a discharge occurs. **N.C. only requires visual qualitative monitoring for turbidity.**
- Training for self-inspectors – Requires any personnel conducting self-inspections to complete an EPA inspection training course and pass an exam on the training materials. **N.C. does not require training for personnel conducting self-inspections required as part of the NCG01.**

- Inspections after 0.25” of rain – Requires permittee to inspect the site and stormwater discharge outfalls within 24 hours after a 0.25” rainfall event. **N.C. requires inspections within 24 hours after a 1” rainfall event.**
- Coverage of stockpiles – Requires stockpiles that are undisturbed for more than 14 days to be covered or provided with temporary stabilization up to and including coverage by tarps. **N.C. requires perimeter measures around stockpiles and temporary cover such as straw mulch but no requirement for coverage by tarps.**

It should be noted that EPA’s acknowledgement of the N.C. E&SC Program as a vital component of the NPDES Construction Stormwater Program allows the State to have an efficient and reasonable approach to E&SC and construction stormwater in comparison to the federal Construction Stormwater General Permit.

### *Redundancy*

As described in the section above, the E&SC plan and the NCG01 have separate regulatory requirements with the E&SC plan functioning as the required SWPPP for NCG01. Redundancy between the two is limited to the contact information and the site location map required during application. In 2019, the N.C. General Assembly’s Program Evaluation Division (PED) evaluated the SPCA and the NCG01. One specific component of the investigation included identifying whether the two programs were duplicative. The PED reported the following:

“...the sedimentation control plans approved by the E&SC program are integrated into the federal requirements of the NPDES program [SWPPP] and that the approval of an erosion and sedimentation control plan automatically provides the regulated community with federal NPDES coverage for stormwater discharges related to construction activities. In addition to plan review and approval, other components of the E&SC program such as monitoring and compliance also ensure that NPDES construction stormwater regulations are met. Therefore, no duplication exists.” Reference: Opportunities Exist to Improve the Erosion and Sedimentation Control Program and Recover \$1.7 Million in Annual Costs, pp. 15-16 of 47.

Any remaining redundancy within the application process will be eliminated in the near future. DEQ is currently developing an electronic permitting process using Microsoft’s Dynamic Customer Relationship Management (CRM) through DEQ’s Permit Transformation Process (PTP). This system will integrate multiple permitting actions requiring data entry of contact information only once. Once the contact information has been registered and established, the applicant can enter the pertinent details of the proposed project and upload plans, maps, and narratives into the system for the relevant permit processes. The system will guide permit writers and reviewers through the application and approval process and track application progress. Applications for an E&SC plan review and the accompanying NCG01 will be linked where applicable to reduce the administrative burden on the applicants. We anticipate that the E&SC program will begin operating in the Dynamic CRM system in the beginning of 2023 with NCG01-Construction Stormwater to follow later in 2024.

## **C. Federal Law Requirements**

### **Federal Law Citations Establishing Specific Requirements for Items (i)-(iii) in Session Law 2022-11**

#### *Federal Law and NPDES Construction Stormwater*

NPDES General Permits: The vast majority of discharges associated with construction activity are covered under NPDES general permits. EPA, States, and Tribes use general permits to cover a group of similar dischargers under one permit. See 40 CFR § 122.28.

Summary of Construction and Development (C&D) Rule Requirements: The C&D rule requirements include non-numeric effluent limitations that apply to all permitted discharges from construction sites (40

CFR § 450.21). The effluent limitations are structured to require construction operators to first prevent the discharge of sediment and other pollutants through the use of effective planning and erosion controls; and second, to control discharges that do occur through the use of effective sediment controls. Operators must implement a range of pollution control and prevention measures to limit or prevent discharges of pollutants, including those from dry weather discharges as well as wet weather (i.e., stormwater). The non-numeric effluent limitations are designed to prevent or minimize the mobilization and stormwater discharge of sediment and sediment-bound pollutants, such as metals and nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants, such as nutrients, organics, pesticides, herbicides and metals that may be present naturally in the soil on construction sites, such as arsenic or selenium, or may have been contributed by previous activities on the site such as agriculture or industrial activity. These pollutants, once mobilized by rainfall and stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The C&D rule's non-numeric effluent limits are as follows (see 40 CFR § 450.21):

- The Federal Construction & Development (C&D) rule: All NPDES permits for construction stormwater must address the minimum federal effluent limitation guidelines for the construction and development point source category (referred to as “the C&D rule”).

The C&D rule found in 40 CFR § 450.21 establishes minimum NPDES effluent limitations, such as:

1. Design, install, and maintain effective erosion and sediment controls, and pollution prevention measures, to minimize the discharge of pollutants;
2. Stabilize disturbed areas immediately when construction has ceased and will not resume for more than 14 days;
3. Prohibit the dewatering discharges unless managed by appropriate controls;
4. Prohibit the discharge of:
  - Wastewater from concrete washout (unless managed by appropriate control), or washout/cleanout of stucco, paint, form release oils, other wastewater materials;
  - Fuels, oils, or other pollutants used for vehicles; and
  - Soaps or solvents to wash vehicles and equipment.

#### *Sources of Federal Law that Establishes the Stormwater Requirements*

Listed below items (i), (ii), (iii) are highlighted requests for the sources of federal law that establishes the stormwater requirements. The identified items are provided for reference. There may be additional or other authorities (court decision, CWA or other federal authorizes etc.) that are not listed.

Please see listed below citations to the Code of Federal Regulations:

- (i) stormwater control design, installation, and maintenance at construction sites;
  - 40 CFR § 450.1
  - 40 CFR § 122.26(c)(1)(i)(A) – (B);

- 40 CFR § 122.26(c)(1)(i)(E)(6)
  - 40 CFR § 122.26 (c)(1)(i)(E)
- (ii) permit applications to be submitted by operators of construction activity, including legal requirements for design and construction specifications to be included with permit applications; and
- 40 CFR § 122.26(c)(1)(ii)(A)-(F)
  - 40 CFR § 122.26(c)(1)(v)
  - 40 CFR § 450.1
  - 40 CFR § 122.26(c)(1)(i)(A) – (B)
- (iii) transfer and termination of a builder, developer, or operator's obligations upon conveyance of property on which construction occurred.
- 40 CFR §122.41 Conditions applicable to all permits
  - 40 CFR § 122.61(l)(3) Transfer of permits
  - 40 CFR § 122.41
  - 40 CFR § 122.61

Note: 1) link for above CFR references: [eCFR :: 40 CFR Part 122 -- EPA Administered Permit Programs: the National Pollutant Discharge Elimination System, 2\)](#) “Automatic permit coverage” is not legal per EPA. EPA requires DEQ to collect data (such as location, size, owner) on construction activities. [40 CFR § 122.26(b)(15)(i)(A)-(B) and (ii) and 40 CFR § 127.1(a)]

## D. Recommendations

### Conclusions and Recommendations

Construction activities disturbing an acre or more of land or activities disturbing less than an acre of land and part of a common plan of development that will disturb an acre or more of land are applicable to the Sedimentation Pollution Control Act of 1973 and the NPDES Construction Stormwater requirements in the NCG010000. A main requirement of the NCG01 is a Stormwater Pollution Prevention Plan. N.C.’s approved E&SC plans function as the SWPPP and are incorporated as a condition of the permit. Therefore, the requirements of the SPCA and approved E&SC plans are not more stringent nor are they redundant to federal requirements included in the NCG01. A 2019 evaluation by NC General Assembly ‘s Program Evaluation Division between the SPCA and the NCG01 concluded that no duplication exists. The two programs are complementary, enabling expedient permit coverage. In fact, the permitting timelines for getting an approved E&SC plan and the accompanying NCG01 are some of the shortest in N.C. The SPCA requires a determination on the review within 30 days for a new plan and 15 days for a revised plan. The NCG01 is typically issued within 3-5 days after receiving a complete NOI. That comes to a total of 35 days for review and approval of an approvable plan and NOI.

The NCG01, as noted above, contains requirements beyond those in the SPCA related to a broader range of monitoring, reporting, and water quality issues. Permit conditions are in place to accomplish monitoring, administrative permit coverage, self-inspections, documentation, data retention, and self-reporting requirements.

### *Recommendations*

Despite requiring separate applications for coverage under the NCG01 since 2019, there are still many in the regulated community that are unaware of the requirement to apply for and obtain a NCG01, especially developers of small construction projects and single family lots. DEMLR's education and outreach staff have developed guidance and materials to increase awareness of the requirements. Staff created a [small lot standard plan set](#) to help small developers design approvable plans without costly engineered designs. Several guidance documents and videos are posted on the DEMLR website to help applicants properly complete necessary forms (e.g., Transfer of Financial Responsibility Notice, [plan checklists](#), NOI guidance, [options for coverage of home lots under the NCG01](#)). However, this is one small part of the education and outreach initiatives within DEMLR. Several delegated local erosion control programs have dedicated staff to work on small lot plan intake and inspections. These staff work directly with small developments to reduce the administrative burden and uncertainty of inexperienced applicants.

DEMLR recommends the creation of a new appropriated position that would interact directly with small developers and single-family home builders to educate them on the requirements of the SPCA and the NCG01. This education would include information on regulatory requirements, but more importantly would provide guidance and training sessions on how to move through the application process quickly and easily. A separate website would be created for these developers hosting example E&SC plans, step by step demonstrations on completing applications and forms, and frequently asked questions (FAQs). The position would also function as a primary point of contact to discuss concerns, questions, and unusual situations.