

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 579
Apr 5, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10203-RIF-8

Short Title: Amend Certain DEQ/EPA Agreements/Proceedings. (Public)

Sponsors: Representative Brody.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND SEDIMENTATION CONTROL PERMITTING REQUIREMENTS, TO ESTABLISH NEW REQUIREMENTS FOR MEMORANDUMS OF AGREEMENT BETWEEN THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, TO REQUIRE GENERAL ASSEMBLY APPROVAL FOR RULEMAKING TO INCORPORATE BY REFERENCE FEDERAL ENVIRONMENTAL REGULATIONS, TO REVISE APPOINTMENTS TO THE SEDIMENTATION CONTROL COMMISSION, TO ESTABLISH THE ENVIRONMENTAL POLICY COUNCIL, AND TO MAKE OTHER CHANGES TO THE ADMINISTRATION OF ENVIRONMENTAL PROGRAMS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

ELIMINATE PERMITTING REDUNDANCIES WHEN NCG01 REQUIRED

SECTION 1.(a) G.S. 113A-57 is rewritten to read:

"§ 113A-57. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 21 calendar days of



1 completion of any phase of grading, be planted or otherwise provided with
2 temporary or permanent ground cover, devices, or structures sufficient to
3 restrain erosion.

- 4 (3) Whenever land-disturbing activity that will disturb more than one acre is
5 undertaken on a tract, the person conducting the land-disturbing activity shall
6 install erosion and sedimentation control devices and practices that are
7 sufficient to retain the sediment generated by the land-disturbing activity
8 within the boundaries of the tract during construction upon and development
9 of the tract, and shall plant or otherwise provide a permanent ground cover
10 sufficient to restrain erosion after completion of construction or development
11 within a time period to be specified by rule of the Commission. Requirements
12 for ground cover necessary to terminate coverage under an erosion and
13 sedimentation control plan, whether those requirements are established by
14 State law or a local government that administers a delegated erosion and
15 sedimentation control program, shall not exceed the requirements for final
16 vegetative or non-vegetative stabilization set forth in Part 2.2.14c. of the
17 National Pollutant Discharge Elimination System (NPDES) Construction
18 General Permit (CGP) for Stormwater Discharges from Construction
19 Activities issued by the United States Environmental Protection Agency as
20 noticed at 87 Federal Register 3522.

- 21 (4) No person shall initiate any land-disturbing activity that will disturb more than
22 one acre on a tract unless, 30 or more days prior to initiating the activity, an
23 erosion and sedimentation control plan for the activity is filed with the agency
24 having jurisdiction and approved by the agency. An erosion and sedimentation
25 control plan may be filed less than 30 days prior to initiation of a
26 land-disturbing activity if the plan is submitted under an approved express
27 permit program, and the land-disturbing activity may be initiated and
28 conducted in accordance with the plan once the plan has been approved. The
29 agency having jurisdiction shall forward to the Director of the Division of
30 Water Resources a copy of each erosion and sedimentation control plan for a
31 land-disturbing activity that involves the utilization of ditches for the purpose
32 of de-watering or lowering the water table of the tract.

- 33 (5) The land-disturbing activity shall be conducted in accordance with the
34 approved erosion and sedimentation control plan.

- 35 (6) For persons initiating land-disturbing activity that are required to obtain
36 coverage under NPDES General Permit No. NCG01000 (NCG01), the
37 requirements of subdivision (4) of this section shall be satisfied through
38 application for and receipt of the NCG01. To avoid duplication of effort on
39 the part of persons initiating such activity, unnecessary delays in project
40 development, and inefficient use of Department personnel as a result of
41 redundant review of such information, no additional or different requirements
42 shall be imposed for the submission or approval of an erosion and
43 sedimentation control plan beyond that required for the NCG01 permit,
44 whether such permit is issued by the Department or by a local government
45 pursuant to G.S. 113A-60(a3)."

46 **SECTION 1.(b)** The Commission shall adopt temporary rules to implement the
47 requirements for ground cover established by G.S. 113A-57(3), as amended by Section 1(a) of
48 this act. Temporary rules adopted in accordance with this subsection shall remain in effect until
49 permanent rules that replace the temporary rules become effective.

50 **SECTION 1.(c)** This section is effective when it becomes law and applies to
51 applications for permits for land-disturbing activities submitted on or after that date.

1 **SECTION 2.(a)** G.S. 113A-54 reads as rewritten:

2 "**§ 113A-54. Powers and duties of the Commission.**

3 (a) The Commission shall, in cooperation with the Secretary of Transportation and other
4 appropriate State and federal agencies, develop, promulgate, publicize, and administer a
5 comprehensive State erosion and sedimentation control program.

6 (b) The Commission shall develop and adopt and shall revise as necessary from time to
7 time, rules and regulations for the control of erosion and sedimentation resulting from
8 land-disturbing activities. The Commission shall adopt or revise its rules and regulations in
9 accordance with Chapter 150B of the General Statutes.

10 (c) The rules and regulations adopted pursuant to G.S. 113A-54(b) for carrying out the
11 erosion and sedimentation control program ~~shall~~shall include all of the following:

12 (1) Be based upon relevant physical and developmental information concerning
13 the watershed and drainage basins of the State, including, but not limited to,
14 data relating to land use, soils, hydrology, geology, grading, ground cover,
15 size of land area being disturbed, proximate water bodies and their
16 characteristics, transportation, and public facilities and ~~services;~~services.

17 (2) Include such survey of lands and waters as may be deemed appropriate by the
18 Commission or required by any applicable laws to identify those areas,
19 including multijurisdictional and watershed areas, with critical erosion and
20 sedimentation ~~problems;~~and problems.

21 (3) Contain conservation standards for various types of soils and land uses, which
22 standards shall include criteria and alternative techniques and methods for the
23 control of erosion and sedimentation resulting from land-disturbing activities.

24 (4) Standards, policies, and procedures for permitting of grading to be adopted by
25 any local government operating an approved erosion and sedimentation
26 control program within its jurisdiction. A separate permit shall not be required
27 for grading, however, where the grading is to be conducted as part of
28 land-disturbing activity that is required to obtain coverage under NPDES
29 General Permit No. NCG01000 (NCG01) or have an approved erosion and
30 sedimentation control plan pursuant to the requirements of this Article. Where
31 a grading permit is required as part of land-disturbing activity that is not
32 required to obtain coverage under the NCG01 or have an approved erosion
33 and sedimentation control plan pursuant to the requirements of this Article, no
34 fee shall be charged in association with the grading permit.

35 (d) In implementing the erosion and sedimentation control program, the Commission
36 shall:

37 (1) Assist and encourage local governments in developing erosion and
38 sedimentation control programs and, as a part of this assistance, the
39 Commission shall develop a model local erosion and sedimentation control
40 ordinance. The Commission shall approve, approve as modified, or
41 disapprove local programs submitted to it pursuant to G.S. 113A-60.

42 (2) Assist and encourage other State agencies in developing erosion and
43 sedimentation control programs to be administered in their jurisdictions. The
44 Commission shall approve, approve as modified, or disapprove programs
45 submitted pursuant to G.S. 113A-56 and from time to time shall review these
46 programs for compliance with rules adopted by the Commission and for
47 adequate enforcement.

48 (3) Develop recommended methods of control of sedimentation and prepare and
49 make available for distribution publications and other materials dealing with
50 sedimentation control techniques appropriate for use by persons engaged in
51 land-disturbing activities, general educational materials on erosion and

1 sedimentation control, and instructional materials for persons involved in the
2 enforcement of this Article and erosion and sedimentation control rules,
3 ordinances, regulations, and plans.

4 (4) Require submission of erosion and sedimentation control plans by those
5 responsible for initiating land-disturbing activities for approval prior to
6 commencement of the activities.

7 (e) To assist it in developing the erosion and sedimentation control program required by
8 this Article, the Commission is authorized to appoint an advisory committee consisting of
9 technical experts in the fields of water resources, soil science, engineering, and landscape
10 architecture.

11 (f) Repealed by Session Laws 1987, c. 827, s. 10, effective August 13, 1987.

12 (g) The Commission is authorized to make the final decision on a request for the
13 remission of a civil penalty under G.S. 113A-64.2."

14 **SECTION 2.(b)** The Commission shall adopt temporary rules to implement the
15 requirements of G.S. 113A-54(c)(4), as enacted by subsection (a) of this section, no later than 60
16 days after this act becomes law. Temporary rules adopted in accordance with this subsection shall
17 remain in effect until permanent rules that replace the temporary rules become effective.

18 **SECTION 2.(c)** Any local government operating an approved erosion and
19 sedimentation control program within its jurisdiction on the date this act becomes law shall, no
20 later than October 1, 2023, submit to the Commission for its approval standards, policies, and
21 procedures for permitting of grading to be adopted by the local government and incorporated into
22 its erosion and sedimentation control program for its jurisdiction in compliance with rules
23 adopted by the Commission pursuant to G.S. 113A-54(c)(4), as enacted by subsection (b) of this
24 section. All grading permit standards, policies, and procedures of such local governments in
25 effect when this act becomes law shall remain in effect until December 31, 2023, but thereafter
26 shall be void and unenforceable, until such time as the Commission has approved new or revised
27 standards, policies, and procedures for permitting of grading to be adopted by the local
28 government and incorporated into the erosion and sedimentation control program for its
29 jurisdiction in compliance with rules adopted by the Commission pursuant to
30 G.S. 113A-54(c)(4), as enacted by Section 2(b) of this act. Where a local government has issued
31 a grading permit for a multiyear project, however, that permit shall nonetheless remain in effect
32 until the termination of the project, and no modifications to such a permit that would result in
33 additional cost to the permittee shall be allowed. The submittal required herein may be done in
34 conjunction with the submittal required pursuant to Section 3(b) of this act.

35
36 **REQUIRED REVISIONS TO LOCAL SEDIMENTATION CONTROL**
37 **PROGRAMS/STRINGENCY LIMITATIONS/AUTHORIZATION TO ISSUE NCG01**

38 **SECTION 3.(a)** G.S. 113A-60 reads as rewritten:

39 **"§ 113A-60. Local erosion and sedimentation control programs.**

40 (a) A local government may submit to the Commission for its approval an erosion and
41 sedimentation control program for its jurisdiction and may adopt ordinances and regulations
42 necessary to establish and enforce erosion and sedimentation control programs. An ordinance
43 adopted by a local government may establish a fee for the review of an erosion and sedimentation
44 control plan and related activities. The fee shall be calculated on the basis of either the number
45 of acres disturbed or in the case of a single-family lot in a residential development or common
46 plan of development that is less than one acre set at no more than one hundred dollars (\$100.00)
47 per lot developed. Local governments are authorized to create or designate agencies or
48 subdivisions of local government to administer and enforce the programs. Except as otherwise
49 provided in this Article, an ordinance adopted by a local government shall at least meet and may
50 exceed the minimum requirements of this Article and the rules adopted pursuant to this Article.

1 (a1) Two or more units of local government are authorized to establish a joint program
2 and to enter into any agreements that are necessary for the proper administration and enforcement
3 of the program. The resolutions establishing any joint program must be duly recorded in the
4 minutes of the governing body of each unit of local government participating in the program, and
5 a certified copy of each resolution must be filed with the Commission.

6 (a2) The requirements of an approved local sedimentation control program established
7 pursuant to subsection (a) or (a1) of this section shall meet, but not exceed, the requirements for
8 stormwater discharges from construction activities set forth under the 2022 Clean Water Act
9 National Pollution Discharge Elimination System (NPDES) general permit for stormwater
10 discharges from construction activities (Construction Permit), 87 Federal Register 3522.

11 (a3) An approved local program shall be required to issue a NPDES General Permit No.
12 NCG01000 (NCG01) to persons initiating land-disturbing activity in their jurisdictions that are
13 required to obtain coverage under the NCG01, in lieu of a land disturbance permit or other permit
14 or certification, issued for purposes of compliance with this Article and rules adopted thereunder.
15 A local program may charge a fee of no more than two hundred dollars (\$200.00) for issuance of
16 a NCG01, and no other fee may be charged under this section. Fifty percent (50%) of such fees
17 charged by a local program shall be retained by the local program and fifty percent (50%) shall
18 be remitted to the Department.

19 (b) The Commission shall review each program submitted and within 90 days of receipt
20 thereof shall notify the local government submitting the program that it has been approved,
21 approved with modifications, or disapproved. The Commission shall only approve a program
22 upon determining that its standards equal ~~or exceed~~ those of this Article and rules adopted
23 pursuant to this Article.

24"

25 **SECTION 3.(b)** Any local government operating an approved erosion and
26 sedimentation control program within its jurisdiction on the date this act becomes law that desires
27 to continue operating such a program shall, no later than October 1, 2023, submit to the
28 Commission for its approval a revised erosion and sedimentation control program for its
29 jurisdiction and may adopt ordinances and regulations necessary to meet, but not exceed, the
30 requirements for stormwater discharges from construction activities set forth under the 2022
31 Clean Water Act National Pollution Discharge Elimination System (NPDES) general permit for
32 stormwater discharges from construction activities (Construction Permit), 87 Federal Register
33 3522. The Commission shall review each revised program submitted and within 90 days of
34 receipt thereof shall notify the local government submitting the revised program that it has been
35 approved, approved with modifications, or disapproved. The Commission shall only approve a
36 revised program upon determining that it meets, but does not exceed, the requirements for
37 stormwater discharges from construction activities set forth under the Construction Permit. After
38 the effective date of this act, a local government shall be deemed only to have approval to
39 administer a limited erosion and sedimentation control program for its jurisdiction that grants the
40 local government the responsibility only for the assessment and collection of fees and for the
41 inspection of land-disturbing activities within the jurisdiction of the local government, as
42 described in G.S. 113A-60(d) and (e), until such time as:

- 43 (1) The Commission has approved a revised program submitted pursuant to this
44 section; and
- 45 (2) The Commission or Department, as applicable, has established processes to
46 enable local governments to issue NPDES General Permit No. NCG01000
47 (NCG01) in lieu of a land disturbance permit or other permit or certification
48 issued for purposes of compliance with Article 4 of Chapter 113A of the
49 General Statutes and rules adopted thereunder.

50 **SECTION 3.(c)** No later than 60 days after this act becomes law, the Commission
51 shall adopt temporary rules to require approved local programs to issue a NPDES General Permit

1 No. NCG01000 (NCG01) to persons initiating land-disturbing activity in their jurisdictions that
2 are required to obtain coverage under the NCG01 in lieu of a land disturbance permit or other
3 permit or certification issued for purposes of compliance with this Article and rules adopted
4 thereunder. Temporary rules adopted in accordance with this subsection shall remain in effect
5 until permanent rules that replace the temporary rules become effective.

6 **SECTION 3.(d)** G.S. 113A-60(a3), as enacted by subsection (a) of this section, is
7 effective upon the date the temporary rules required by subsection (c) of this section become
8 effective and applies to applications for permits for land-disturbing activities submitted on or
9 after that date.

10
11 **MEMORANDUM OF AGREEMENTS BETWEEN DEQ AND USEPA TO REQUIRE**
12 **GENERAL ASSEMBLY APPROVAL/DEQ ADMINISTRATION OF**
13 **ENVIRONMENTAL PROGRAMS IN EVENT OF WITHDRAWAL OF USEPA**
14 **DELEGATION/DEQ RESERVATION OF RIGHT TO DEFINE VAGUE, AMBIGUOUS,**
15 **OR UNDEFINED TERMS/REQUIRE GENERAL ASSEMBLY APPROVAL FOR**
16 **RULEMAKING TO INCORPORATE FEDERAL ENVIRONMENTAL REGULATIONS**
17 **BY REFERENCE**

18 **SECTION 4.(a)** Article 7 of Chapter 143B of the General Statutes is amended by
19 adding a new section to read:

20 **"§ 143B-279.4A. Requirements for Department administration of federally delegated**
21 **environmental programs.**

22 (a) All memorandums of agreement between the United States Environmental Protection
23 Agency and the Department of Environmental Quality, the Environmental Management
24 Commission, the Coastal Resources Commission, the Sedimentation Control Commission, and
25 any other board or commission charged under the State's statutes with implementation of State
26 or federal environmental law shall, prior to execution, require approval of the General Assembly
27 by majority vote of the Senate and the House of Representatives. The Governor shall transmit
28 any proposed memorandums of agreements of this nature, or modifications to such agreements,
29 to the presiding officers of the Senate and the House of Representatives for confirmation by joint
30 resolution. Implementation of the terms of such agreements shall be prohibited absent
31 confirmation by the General Assembly.

32 (b) In the event that the United States Environmental Protection Agency (USEPA) should
33 act to withdraw authority it has delegated to the State of North Carolina to administer the Clean
34 Water Act, the Department of Environmental Quality is nonetheless directed by the General
35 Assembly to continue administration of the terms of the most recent version of any applicable
36 memorandum of agreement executed between the State and USEPA that governs the State's
37 administration of that program and to continue to timely issue any permits associated with the
38 program if the General Assembly issues a determination through joint resolution that USEPA
39 lacks funding or adequate personnel to effectively administer the program's requirements, and,
40 as such, assumption of the program's requirements by USEPA would cause serious economic
41 hardships upon people and business in North Carolina that are subject to federal environmental
42 law. The Department shall continue to administer the program under the terms of the most recent
43 version of any applicable memorandum of agreement until such time as a new agreement between
44 the State and USEPA has been approved by the General Assembly through joint resolution, and
45 subsequently executed by the Department.

46 (c) Notwithstanding any authority to adopt rules for the protection of the environment or
47 natural resources granted under the statutes to the Department, the Environmental Management
48 Commission, the Sedimentation Control Commission, the Coastal Resources Commission, or
49 any other board or commission, no State agency shall incorporate by reference any federal law
50 or regulation for the protection of the environment or natural resources until the General
51 Assembly has enacted legislation to specifically approve the agency's adoption of the rule. If an

1 agency seeks to adopt a rule to incorporate a federal law or regulation for the protection of the
 2 environment or natural resources by reference, the Department shall submit a petition to the
 3 General Assembly requesting approval for adoption of the rule and include the content of the
 4 federal law or regulation to be incorporated by reference.

5 (d) The Department reserves the right to define vague, ambiguous, or undefined terms
 6 that may be included in any memorandum of agreement with the United States Environmental
 7 Protection Agency or federal environmental law as issues may arise resulting from application
 8 of such terms.

9 (e) The Department shall submit a quarterly report to the Environmental Policy Council
 10 identifying all changes to federal law or regulations enacted or proposed during the previous
 11 quarter that would impact the administration of environmental regulatory programs in North
 12 Carolina."

13 **SECTION 4.(b)** G.S. 143B-279.4A(a), as enacted by subsection (a) of this section,
 14 shall apply to memorandums of agreement, or modifications to such agreements, proposed for
 15 execution on or after the effective date of this act. The first report due pursuant to
 16 G.S. 143B-279.4A(e), as enacted by subsection (a) of this section, shall be submitted October 1,
 17 2023.

19 **REVISE SEDIMENTATION CONTROL COMMISSION APPOINTMENTS**

20 **SECTION 5.** G.S. 143B-299 reads as rewritten:

21 **"§ 143B-299. Sedimentation Control Commission – members; selection; compensation;**
 22 **meetings.**

23 (a) ~~Creation; Membership. Creation.~~ – There is hereby created in the Department of
 24 Environmental Quality the North Carolina Sedimentation Control Commission, which is charged
 25 with the duty of developing and administering the sedimentation control program provided for
 26 in this Article. ~~The Commission shall consist of the following members:~~

- 27 (1) ~~A person to be nominated jointly by the boards of the North Carolina League~~
 28 ~~of Municipalities and the North Carolina Association of County~~
 29 ~~Commissioners.~~
- 30 (2) ~~A person to be nominated by the Board of the North Carolina Home Builders~~
 31 ~~Association.~~
- 32 (3) ~~A person to be nominated by the Carolinas Branch, Associated General~~
 33 ~~Contractors of America.~~
- 34 (4) ~~A representative of a North Carolina public utility company.~~
- 35 (5) ~~The Director of the North Carolina Water Resources Research Institute.~~
- 36 (6) ~~A member of the North Carolina Mining Commission who shall be a~~
 37 ~~representative of nongovernmental conservation interests, as required by G.S.~~
 38 ~~74-38(b).~~
- 39 (7) ~~A member of the State Soil and Water Conservation Commission.~~
- 40 (8) ~~A member of the Environmental Management Commission.~~
- 41 (9) ~~A soil scientist from the faculty of North Carolina State University.~~
- 42 (10) ~~Two persons who shall be representatives of nongovernmental conservation~~
 43 ~~interests.~~
- 44 (11) ~~A professional engineer registered under the provisions of Chapter 89C of the~~
 45 ~~General Statutes nominated by the Professional Engineers of North Carolina,~~
 46 ~~Inc.~~

47 (b) ~~Appointment.~~ – ~~The Commission members shall be appointed by the Governor. All~~
 48 ~~Commission members, except the person appointed under subdivision (5) of subsection (a) of~~
 49 ~~this section, shall serve staggered terms of three years and until their successors are appointed~~
 50 ~~and duly qualified. The person appointed under subdivision (5) of subsection (a) of this section~~
 51 ~~shall serve as a member of the Commission, subject to removal by the Governor as hereinafter~~

1 specified in this section, so long as the person continues as Director of the Water Resources
2 Research Institute. The terms of members appointed under subdivisions (2), (4), (7), and (8) of
3 subsection (a) of this section shall expire on 30 June of years evenly divisible by three. The terms
4 of members appointed under subdivisions (1), (3), and (10) of subsection (a) of this section shall
5 expire on 30 June of years that follow by one year those years that are evenly divisible by three.
6 The terms of members appointed under subdivisions (6), (9), and (11) of subsection (a) of this
7 section shall expire on 30 June of years that precede by one year those years that are evenly
8 divisible by three. Except for the person appointed under subdivision (5) of subsection (a) of this
9 section, no member of the Commission shall serve more than two complete consecutive
10 three year terms. Any member appointed by the Governor to fill a vacancy occurring in any of
11 the appointments shall be appointed for the remainder of the term of the member causing the
12 vacancy. The Governor may at any time remove any member of the Commission for inefficiency,
13 neglect of duty, malfeasance, misfeasance, nonfeasance, or because they no longer possess the
14 required qualifications for membership. The office of the North Carolina Sedimentation Control
15 Commission is declared to be an office that may be held concurrently with any other elective or
16 appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

17 (a1) The Commission shall consist of 12 members appointed as follows:

- 18 (1) One person appointed by the Governor subject to confirmation in
19 conformance with Section 5(8) of Article III of the North Carolina
20 Constitution, upon joint recommendation of the boards of the North Carolina
21 League of Municipalities and the North Carolina Association of County
22 Commissioners.
- 23 (2) One person appointed by the Governor subject to confirmation in
24 conformance with Section 5(8) of Article III of the North Carolina
25 Constitution, upon recommendation of the Carolinas Branch, Associated
26 General Contractors of America, that specializes in commercial site
27 development.
- 28 (3) One person appointed by the Governor subject to confirmation in
29 conformance with Section 5(8) of Article III of the North Carolina
30 Constitution, who is a professional engineer registered under the provisions
31 of Chapter 89C of the General Statutes, upon recommendation of the
32 Professional Engineers of North Carolina, Inc., that specializes in stormwater
33 and erosion control and design.
- 34 (4) One person appointed by the Governor subject to confirmation in
35 conformance with Section 5(8) of Article III of the North Carolina
36 Constitution, who is a member of the State Soil and Water Conservation
37 Commission.
- 38 (5) One person appointed by the Governor subject to confirmation in
39 conformance with Section 5(8) of Article III of the North Carolina
40 Constitution, who is a member of the North Carolina Mining Commission.
- 41 (6) One person appointed by the General Assembly upon recommendation of the
42 Speaker of the House of Representatives in conformance with G.S. 120-121,
43 upon recommendation of the Board of the North Carolina Home Builders
44 Association.
- 45 (7) One person appointed by the General Assembly upon recommendation of the
46 Speaker of the House of Representatives in conformance with G.S. 120-121,
47 who is a contractor that specializes in coastal construction.
- 48 (8) One person appointed by the General Assembly upon recommendation of the
49 Speaker of the House of Representatives in conformance with G.S. 120-121,
50 who is a licensed soil scientist, as defined in G.S. 89F-3.

1 (9) One person appointed by the General Assembly upon recommendation of the
2 President Pro Tempore of the Senate in conformance with G.S. 120-121, upon
3 recommendation of the Board of the North Carolina Home Builders
4 Association that specializes in residential site development.

5 (10) One person appointed by the General Assembly upon recommendation of the
6 President Pro Tempore of the Senate in conformance with G.S. 120-121, who
7 is a design professional that specializes in site development in the piedmont
8 area of the State.

9 (11) One person appointed by the General Assembly upon recommendation of the
10 President Pro Tempore of the Senate in conformance with G.S. 120-121, who
11 is a design professional that specializes in site development in the
12 highland/mountain area of the State.

13 (12) The Director of the North Carolina Water Resources Research Institute, ex
14 officio and nonvoting.

15 (a2) Process for Appointments by the Governor. – The Governor shall transmit to the
16 presiding officers of the Senate and the House of Representatives, within four weeks of the
17 convening of the session of the General Assembly in the year for which the terms in question are
18 to expire, the names of the persons to be appointed by the Governor and submitted to the General
19 Assembly for confirmation by joint resolution. If an appointment is required pursuant to this
20 subsection when the General Assembly is not in session, the member may be appointed and serve
21 on an interim basis pending confirmation by the General Assembly. For the purpose of this
22 subsection, the General Assembly is not in session only (i) prior to convening of the regular
23 session, (ii) during any adjournment of the regular session for more than 10 days, or (iii) after
24 sine die adjournment of the regular session.

25 (a3) Terms. – The term of office of members of the Commission is four years, beginning
26 effective January 1 of the year of appointment and terminating on December 31 of the year of
27 expiration. A member may be reappointed to no more than two consecutive four-year terms. The
28 term of a member who no longer meets the qualifications of their respective appointment, as set
29 forth in subsection (a1) of this section, shall terminate but the member may continue to serve
30 until a new member who meets the qualifications is appointed. In order to establish regularly
31 overlapping terms, initial appointments shall be made effective June 1, 2023, or as soon as
32 feasible thereafter, and expire as follows:

33 (1) The initial appointments made by the Governor:

34 a. Pursuant to subdivision (a1)(1) of this section shall expire December
35 31, 2025.

36 b. Pursuant to subdivision (a1)(2) of this section shall expire December
37 31, 2026.

38 c. Pursuant to subdivision (a1)(3) of this section shall expire December
39 31, 2026.

40 d. Pursuant to subdivision (a1)(4) of this section shall expire December
41 31, 2027.

42 e. Pursuant to subdivision (a1)(5) of this section shall expire December
43 31, 2027.

44 (2) The initial appointments made by the General Assembly upon
45 recommendation of the Speaker of the House of Representatives:

46 a. Pursuant to subdivision (a1)(6) of this section shall expire December
47 31, 2025.

48 b. Pursuant to subdivision (a1)(7) of this section shall expire December
49 31, 2026.

50 c. Pursuant to subdivision (a1)(8) of this section shall expire December
51 31, 2027.

- 1 (3) The initial appointments made by the General Assembly upon
2 recommendation of the President Pro Tempore of the Senate:
3 a. Pursuant to subdivision (a1)(9) of this section shall expire December
4 31, 2025.
5 b. Pursuant to subdivision (a1)(10) of this section shall expire December
6 31, 2026.
7 c. Pursuant to subdivision (a1)(11) of this section shall expire December
8 31, 2027.
9 (a4) Vacancies. – In case of death, incapacity, resignation, or vacancy for any other reason
10 in the office of any member appointed by the Governor, prior to the expiration of the member's
11 term of office, the name of the successor shall be submitted by the Governor within four weeks
12 after the vacancy arises to the General Assembly for confirmation by the General Assembly. In
13 case of death, incapacity, resignation, or vacancy for any other reason in the office of any member
14 appointed by the General Assembly, vacancies in those appointments shall be filled in
15 conformance with G.S. 120-122. If a vacancy arises or exists when the General Assembly is not
16 in session and the appointment is deemed urgent by the Governor, the member may be appointed
17 by the Governor and serve on an interim basis pending confirmation or appointment by the
18 General Assembly, as applicable. An appointment to fill a vacancy shall be for the unexpired
19 balance of the term.
20 (a5) Removal. – The Governor shall have the power to remove any member of the
21 Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the
22 provisions of G.S. 143B-13 of the Executive Organization Act of 1973 or for good cause.
23 (b1) Chair. – The Governor shall designate a member of the Commission to serve as chair.
24 (c) Compensation. – The members of the Commission shall receive the usual and
25 customary per diem allowed for the other members of boards and commissions of the State and
26 as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission
27 shall receive subsistence and travel expenses according to the prevailing State practice and as
28 allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed
29 while going to or from any place of meeting or when on official business for the Commission.
30 The per diem payments made to each member of the Commission shall include necessary time
31 spent in traveling to and from their places of residence within the State to any place of meeting
32 or while traveling on official business for the Commission shall receive per diem and necessary
33 traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.
34 (d) Meetings of Commission. – The Commission shall meet at the call of the chair and
35 shall hold special meetings at the call of a majority of the members.
36 (e) Quorum. – The affirmative vote of seven members present at meetings of the
37 Commission shall be necessary for action to be taken by the Commission.
38 (f) Staff. – All clerical and other services required by the Commission shall be supplied
39 by the Secretary of Environmental Quality.
40 (g) Office May Be Held Concurrently With Others. – Membership on the Commission is
41 hereby declared to be an office that may be held concurrently with other elective or appointive
42 offices in addition to the maximum number of offices permitted to be held by one person under
43 G.S. 128-1.1."

44 **SECTION 6.** Chapter 120 of the General Statutes is amended by adding a new
45 Article to read:

46 "Article 37.

47 "Environmental Policy Council.

48 **"§ 120-320. Creation and membership of the Environmental Policy Council.**

49 (a) The Environmental Policy Council is established. The Council consists of the
50 following members:

- 1 (1) One member appointed by the Governor who is a registered professional
2 engineer licensed under Chapter 89C of the General Statutes with expertise in
3 site development.
- 4 (2) One member appointed by the Governor who is a representative of
5 nongovernmental conservation interests.
- 6 (3) One member appointed by the Governor, at large.
- 7 (4) One member appointed by the General Assembly upon recommendation of
8 the President Pro Tempore of the Senate upon the recommendation of the
9 North Carolina Home Builders Association.
- 10 (5) One member appointed by the General Assembly upon recommendation of
11 the President Pro Tempore who is a registered professional engineer licensed
12 under Chapter 89C of the General Statutes with expertise in stormwater and
13 sedimentation and erosion control plan and design.
- 14 (6) One member appointed by the General Assembly upon recommendation of
15 the President Pro Tempore of the Senate, at large.
- 16 (7) One member appointed by the General Assembly upon recommendation of
17 the Speaker of the House of Representatives who has experience in economic
18 development.
- 19 (8) One member appointed by the General Assembly upon recommendation of
20 the Speaker of the House of Representatives upon recommendation of the
21 Carolinas Branch, Associated General Contractors of America, or other
22 similar organization.
- 23 (9) One member appointed by the General Assembly upon recommendation of
24 the Speaker of the House of Representatives, at large.
- 25 (10) A cochair of the House Environment Committee, appointed by the General
26 Assembly upon recommendation of the Speaker of the House of
27 Representatives.
- 28 (11) A cochair of the Senate Committee on Agriculture, Energy, and the
29 Environment, appointed by the General Assembly upon recommendation of
30 the President Pro Tempore of the Senate.
- 31 (12) One member of the Senate appointed by the General Assembly upon
32 recommendation of the President Pro Tempore of the Senate.
- 33 (13) One member of the House of Representatives appointed by the General
34 Assembly upon recommendation of the Speaker of the House of
35 Representatives.
- 36 (14) The Secretary of Environmental Quality, or the Secretary's designee.
- 37 (15) The Chair of the Environmental Management Commission, or the Chair's
38 designee.
- 39 (16) The Chair of the Sedimentation Control Commission, or the Chair's designee.
- 40 (17) The Chair of the Coastal Resources Commission, or the Chair's designee.
- 41 (b) Terms on the Council are for two years and begin on the convening of the General
42 Assembly in each odd-numbered year. Members may complete a term of service on the Council
43 even if they do not seek reelection or are not reelected to the General Assembly, but resignation
44 or removal from service in the General Assembly constitutes resignation or removal from service
45 on the Council.
- 46 (c) A member continues to serve until a successor is appointed. A vacancy shall be filled
47 within 30 days by the officer who made the original appointment.
- 48 **"§ 120-321. Purpose and powers of Council.**
- 49 (a) The Environmental Policy Council shall review:
- 50 (1) The efficacy of State and local programs regulating environmental and natural
51 resource matters in North Carolina, and costs associated with those programs.

(2) Current federal laws and regulations for the protection of the environment or natural resources, and how those requirements are implemented by State and local entities.

(3) Proposed changes to federal laws and regulations for the protection of the environment or natural resources, and potential impacts from those proposed changes.

(b) The Environmental Policy Council shall make recommendations for legislative action on a continuing basis on any of the matters set forth in subsection (a) of this section, and specifically legislative action to approve or disapprove the authority of any State agency, board, or commission to adopt rules that incorporate proposed changes to federal laws and regulations for the protection of the environment or natural resources by reference pursuant to G.S. 143B-279.4A(c).

"§ 120-322. Subsistence and travel expenses.

The members of the Council who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1. Members who are officials or employees of the State of North Carolina shall receive subsistence and travel allowances at the rate set forth in G.S. 138-6. All other members shall be paid the per diem allowances at the rates set forth in G.S. 138-5.

"§ 120-323. Meetings; quorum; chair; and staff.

(a) The Council may hold its meetings in the State Legislative Building with the approval of the Legislative Services Commission. The Council may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session.

(b) The affirmative vote of nine members present at meetings of the Council shall be necessary for action to be taken by the Council.

(c) Chair. – A chair shall be elected by a majority vote of the Council to serve a term of two years.

(d) The Legislative Services Commission shall provide necessary professional and clerical assistance to the Council."

DEQ TO INITIATE DISCUSSIONS WITH USEPA TO REVISE MEMORANDUM OF AGREEMENT(S) GOVERNING IMPLEMENTATION OF SEDIMENTATION REQUIREMENTS IN THE STATE

SECTION 7. No later than July 1, 2023, the Department of Environmental Quality shall notify the United States Environmental Protection Agency (USEPA) of its intent to initiate discussions to revise the National Pollutant Discharge Elimination System Memorandum of Agreement between the State of North Carolina and USEPA Region 4, and any other agreement with USEPA, that governs the State's Sedimentation Pollution Control Act of 1973 (Act), and its implementation of NPDES General Permit NCG010000 (NCG01) to streamline the regulatory requirements of the Act and NCG01 for the purpose of eliminating program redundancies to minimize (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 Policy Council 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.

DEQ TO REQUEST THAT USEPA CONSULT DEQ ON PROPOSED CHANGES TO ALL APPLICABLE FEDERAL REGULATIONS PRIOR TO NOTICE OF SAME IN THE FEDERAL REGISTER

SECTION 8. No later than July 1, 2023, the Department of Environmental Quality shall request that the United States Environmental Protection Agency (USEPA) consult with the

1 Department on any proposed changes to federal regulations that would impact the State's
2 administration of federal environmental programs in North Carolina, prior to the USEPA's notice
3 of such proposed changes in the Federal Register, so that the State may have opportunity for
4 meaningful collaborative input on development of regulations that it may be charged with
5 administering. The Department shall report to the Environmental Policy Council on the status of
6 their activities pursuant to this section quarterly, beginning August 1, 2024, until such time as
7 the General Assembly repeals this reporting requirement.

8
9 **DEQ TO PROVIDE COPIES OF AGREEMENTS WITH USEPA, AND ASSOCIATED**
10 **FUNDING INFORMATION**

11 **SECTION 9.** No later than July 1, 2023, the Department of Environmental Quality
12 shall submit copies of any agreements executed between the Department and the United States
13 Environmental Protection Agency that govern the State's administration of programs under the
14 Clean Water Act to the House Local Government – Land Use, Planning and Development
15 Committee. In addition, the Department shall provide information to the Committee on:

- 16 (1) Any federal funds received by the State in connection with the State's
17 administration of such programs, and all federal requirements for receipt of
18 such funds; and
- 19 (2) The adequacy of funding from all sources to fully implement the requirements
20 of such agreements.

21
22 **SEVERABILITY CLAUSE**

23 **SECTION 10.** If any section or provision of this act is declared unconstitutional or
24 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
25 the part declared to be unconstitutional or invalid.

26
27 **EFFECTIVE DATE**

28 **SECTION 11.** Except as otherwise provided, this act is effective when it becomes
29 law.