



HOUSE BILL 579: Sedimentation Act & Other Env'l. Changes.

2023-2024 General Assembly

Committee:	House Regulatory Reform. If favorable, re- refer to Rules, Calendar, and Operations of the House	Date:	May 31, 2023
Introduced by:	Reps. Brody, Saine, Zenger, N. Jackson	Prepared by:	Jennifer McGinnis Committee Counsel
Analysis of:	PCS to First Edition H579-CSRIf-17		

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 579 would: (i) amend various permitting requirements under the Sedimentation Pollution Control Act (SPCA or Act); (ii) require the Department of Environmental Quality (DEQ) to request that the United States Environmental Protection Agency (USEPA) consult with DEQ on proposed changes to all applicable federal regulations prior to notice of the regulations in the Federal Register; and (iii) require DEQ to provide information on agreements with USEPA and funding matters related to administration of the federal Clean Water Act to the House Local Government – Land Use, Planning and Development Committee.*

The PCS makes a number of changes to the First Edition of the bill, including:

- *Requiring DEQ to prepare and submit various permitting changes to be made under the PCS to USEPA for approval. The changes would not become effective absent USEPA's approval.*
- *Removing provisions that would have:*
 - *Established new requirements applicable to memorandums of agreements between DEQ and USEPA that govern the State's administration and enforcement of federally required environmental programs.*
 - *Required the General Assembly's approval for agency rulemaking to incorporate federal environmental regulations by reference.*
 - *Revised appointments to the Sedimentation Control Commission (Commission).*
 - *Established the Environmental Policy Council.*

CURRENT LAW/BACKGROUND:

The federal Clean Water Act requires National Pollutant Discharge Elimination System (NPDES) permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres (see [40 CFR 122.26](#) implementing [Section 402 of the Clean Water Act \(CWA\)](#)).

USEPA issues a [NPDES Construction General Permit for Stormwater Discharges from Construction Activities \(federal CGP\)](#), however, DEQ and the Environmental Management Commission have been delegated authority from USEPA to administer the NPDES program (including the stormwater construction program) within North Carolina. The State implements the federal stormwater construction

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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requirements through the [SPCA](#), and [rules adopted thereunder](#), and has issued its own NPDES General Permit for stormwater from construction sites ([NCG01](#)). Pursuant to the SPCA, no person may initiate any land-disturbing activity that uncovers more than one acre without having an erosion and sedimentation control plan approved by the Commission, and a NCG01¹. The SPCA, however, authorizes local governments, upon approval of the Commission to implement and administer the Act's requirements within their jurisdictions (approved local programs).

BILL ANALYSIS:

ELIMINATE PERMITTING REDUNDANCIES WHEN NCG01 REQUIRED

Section 1 of the bill would amend the SPCA to:

- Prohibit State or local requirements for ground cover necessary to terminate coverage under an erosion and sedimentation control plan, from exceeding the requirements for final vegetative or non-vegetative stabilization set forth in the federal GCP.
- Provide that if a person initiating land disturbing activity obtains coverage under the State's NCG01 permit, requirements for an erosion control plan would be satisfied through application for and receipt of the NCG01, and no additional or different requirements may be imposed for the submission or approval of an erosion and sedimentation control plan beyond that required for the NCG01 permit, whether the permit is issued by DEQ or by a local government.
- Prohibit approved local program requirements from exceeding the requirements for stormwater discharges from construction activities set forth under the federal GCP.
- Require approved local programs to issue a NCG01, in lieu of a land disturbance permit or other permit or certification. A local program would be authorized to charge a fee of no more than \$200.00 for issuance of a NCG01, and would be prohibited from charging any other fee for permitting of the activity. 50% of the fees charged by a local program would be retained by the local program and 50% would be remitted to DEQ.
- Require the Commission to adopt standards, policies, and procedures for permitting of grading to be adopted by any local government operating an approved program within its jurisdiction, which must prohibit: (i) a separate grading permit where the grading is to be conducted as part of land disturbing activity that is required to obtain coverage under the NCG01, or have an approved erosion and sedimentation control plan pursuant to the Act; and imposition of a fee where a grading permit is required as part of land disturbing activity that is not required to obtain coverage under the NCG01 or have an approved erosion and sedimentation control plan.

The PCS requires that DEQ, no later than September 1, 2023, prepare and submit the changes identified above to USEPA for its approval. The provisions would become effective on the later of the following dates and apply to permits to conduct land-disturbing activity submitted on or after that date:

- (1) July 1, 2024.**
- (2) The first day of a month that is 60 days after the Secretary of DEQ certifies to the Revisor of Statutes that the United States Environmental Protection Agency has approved an amendment to the Act embodying the changes identified above.**

¹ Prior to 2019, DEQ granted "automatic coverage" under the NCG01 upon approval of an erosion and sedimentation control plan. USEPA notified the State, however, that automatic coverage of the federally required permit was not permissible, thus submittal of a plan, and application for an NCG01 is now required for regulated land-disturbing activities.

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Beginning October 1, 2023, DEQ must report quarterly to the Environmental Review Commission on the status of their activities to obtain USEPA's approval for the changes identified above, 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 2 would require DEQ, no later than July 1, 2023, to request that USEPA consult with DEQ on any proposed changes to federal regulations that would impact the State's administration of federal environmental programs in North Carolina, prior to USEPA's notice of such proposed changes in the Federal Register, so that the State may have opportunity for meaningful collaborative input on development of regulations that it may be charged with administering. DEQ must 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 PROVIDE COPIES OF AGREEMENTS WITH USEPA, AND ASSOCIATED FUNDING INFORMATION

Section 3 would require DEQ, no later than July 1, 2023, to submit copies of any agreements executed between DEQ and USEPA that govern the State's administration of programs under the Clean Water Act to the House Local Government – Land Use, Planning and Development Committee. In addition, DEQ would be required to provide information to the Committee on:

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

SEVERABILITY CLAUSE

Section 4 would provide that if any section or provision of this bill is declared unconstitutional or invalid by the courts, it would not affect the validity of this legislation as a whole or any part other than the part declared to be unconstitutional or invalid.

EFFECTIVE DATE: Except as otherwise provided, this bill would be effective when it becomes law.