Report to the North Carolina General Assembly's Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources

Study of the Express and Fast-Track Stormwater Permitting Programs

December 31, 2022

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

Pursuant to S.L. 2022-43, Sec. 6

Report on the DEQ Study of The Express Permit and Certification Review Program and the Fast-Track Stormwater Permitting Program

To fulfill the requirements and pursuant to Session Law (S.L.) 2022-43, Section 6.

Pursuant to Session Law 2022-43, Section 6: *The Department of Environmental Quality shall study approaches to expedite permit issuance under the following programs: (i) the express permit and certification review program established pursuant to G.S. 143B-279.13 and (ii) the fast-track permitting for the stormwater management systems program established pursuant to G.S. 143-214.7B and 15A NCAC 02H .1043 and .1044. The Department shall report its findings, including any recommendations for legislative action to improve permitting efficiencies under the programs, to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources no later than December 31, 2022.*

The following sections will provide background on DEQ's Post-Construction Stormwater Permitting Programs with specific descriptions of the Express Program (G.S. 143B-279.13) and the Fast-track Program (G.S. 143-214.7B and 15A NCAC 02H .1043 and .1044) and will discuss recommendations on potential permitting efficiencies.

Report Structure

A. Background

The Department of Environmental Quality's Division of Energy, Mineral, and Land Resources ("Division" or "DEMLR") seeks to promote the wise use and protection of North Carolina's land and geologic resources. The Division regulates and provides technical assistance related to mining, dams, sediment and erosion control, and stormwater.

Stormwater runoff can pick up pollutants like trash, chemicals, oils, and dirt/sediment and carry these pollutants into our state's waters. To protect these resources, The Division maintains several key programs including the NC Post-Construction Stormwater Program and the Municipal Separate Storm Sewer System (MS4) Program. These programs require communities, construction companies, industries, and others to use stormwater controls to intercept and filter out pollutants and/or prevent pollution by controlling it at its source, before it can enter the state's waters.

The Division's Post-Construction Stormwater Program protects our state's resources through the regulation of stormwater control measures (SCMs). These measures and the associated development are approved through permitting processes set forth in the Express Permitting Program, the Fast-track Permitting Program, and the regular stormwater permitting process. These post-construction stormwater permitting processes are used to address stormwater pollution related to the land-use changes associated with new development. The post-construction stormwater regulations apply to development in many, but not all parts of the state, and they are administered by either the Division or local government programs, depending on the area. The Division implements the program in nearly all of NC's coastal counties, and in many rural and urban areas stretching across the state from Cherokee to Dare County. Without these post-construction stormwater requirements and control measures, pollutants would course unabated into our state's waters.

Recent population growth and the resulting development of urban areas have increased the number of pollutants in stormwater runoff as well as the volume and rate of runoff from impervious surfaces. Together, this can cause changes in hydrology and water quality that result in habitat modification and loss, increased flooding, decreased aquatic biological diversity, and increased sedimentation and erosion.

This issue has caused particular challenges in NC's coastal counties, which have experienced significant population growth and development. NC's coastal waters and estuarine shoreline include diverse coastal habitats that provide the foundation for a healthy and sustainable seafood industry, a sound coastal economy, and resilient coastal communities. Located at the convergence of the Mid- and South Atlantic biogeographical provinces, NC supports a mix of northern and southern fish species. This combination of species richness, extensive coastal waters (estuarine and marine), and the diversity and abundance of coastal habitats makes NC's coastal fisheries among the most productive in the US. However, the increase in development and the resulting stormwater challenges have led to rising concern about declining water quality and its effect on structured habitat such as submerged aquatic vegetation (SAV), shell bottom, and wetlands. For the protection of these essential resources, as well as those across our state, it is essential that the Post-Construction Stormwater Program can perform its role effectively and efficiently.

Pursuant to Session Law 2022-43, detailed below are accounts of the Express Permitting Program (G.S. 143B-279.13) and the Fast-track Permitting Program (G.S. 143-214.7B, 15A NCAC 02H .1043 and .1044) as well as recommendations on potential permitting efficiencies.

B. Express Permitting

The Express Program was initiated in 2004 by N.C. General Statute §143b-279.13–14 as an alternative to the regular permitting process. The intent of the program is to provide quicker reviews for eligible projects by dedicated Express Program staff that are funded solely by the Express Program's higher permitting fees. The Express Program allows for expedited reviews in several different permitting areas across DEQ. In addition to the Division's Express Stormwater Program, this includes the Division's Express Erosion and Sedimentation Control Program as well as express programs in the Divisions of Water Resources and Coastal Management. The eligibility requirements for each program are set by each participating review agency. The maximum application fee for a single project across several permitting actions (such as Erosion Control, Stormwater, and Coastal Area Management) is $4,000.

The Express Stormwater Program also encourages greater involvement from licensed professionals, property owners, and applicants through pre-application meetings (also known as submittal meetings). These meetings are organized by DEQ's Division of Environmental Assistance and Customer Service (DEACS) coordinators and help Division staff understand the features of the project and confirm whether the project is eligible for the Express Program. Applicants benefit from guidance provided by Division staff on the relevant programs and the application package. This can allow for the review of high-quality applications on a quicker timeline.

Per statute, the Division has up to 90 days to process regular stormwater permits. There is no additional statutory timeline for Express permits, but the Division has set a policy goal of issuing Express permits within 30 days. In FY 2021-2022, permit applications in the Express Stormwater Program were processed in 19 days on average, compared to 60 days on average for regular stormwater permits.

Over the last decade, the annual number of Express Stormwater Program permits issued has fluctuated between 99 and 177. During the two most recent years (FY 2020-2021 and FY 2021-2022), 99 and 128 permits were issued, respectively.

Staffing levels for the Express Program have fluctuated over the years based on demand and other changes such as Reduction in Force (RIF) and employee turnover.

C. Fast-Track Permitting

Fast-track permitting enables projects to bypass the standard technical review that is conducted in the regular or Express post-construction permitting processes if the project meets the eligibility requirements and the minimum design criteria (MDC). The MDC cover all aspects of a project from siting and design to construction and monitoring. These criteria ensure that stormwater management systems comply with state water quality standards.

Projects that do not qualify for the Fast-track permitting process include: (a) projects claiming an exemption from the MDC based on vested rights, a waiver, or Director's certification pursuant to Rule 02H .1040(7); (b) modifications to existing projects where the proposed changes to the SCMs will not result in compliance with MDC; and (c) projects that are not in compliance with a current stormwater permit.

Process:

The Fast-track stormwater rules set forth a two-phase permitting process intended to allow eligible projects to start construction faster. The two-phase process includes:

1. Apply for and receive an authorization to construct (ATC) permit. (This is based on a completeness review for administrative issues.) The ATC permit expires five years after the date of issuance.

2. Once the project is complete, apply for and receive a final Fast-track Permit.

The Division has 30 days from receipt of the ATC application to issue the permit or request additional information. For the final Fast-track permit, the Division has 40 days from receipt of the as-built package to issue or deny the permit or undertake compliance action.

Permitting use and results:

Authorization to Construct: On January 1, 2017, the Fast-track Program came into effect. From that date through September 30, 2022, DEQ has received 175 applications and issued 161 (92%) ATC permits, almost exclusively in DEQ's Wilmington Regional Office (WiRO) and Central Office (CO). This makes up approximately 1% of the stormwater permits issued since the inception of the program.

Approval of final Fast-track permits: In the final permitting step, DEQ is required to review the as-built application package for completeness and compliance before issuing an approval of the final Fast-track permit. This process ensures stormwater from the development is treated with appropriate SCMs that will be properly operated and maintained. It also ensures that built upon area (BUA) is in keeping with the application. In addition to the review of the as-built package, the approval process may include a site inspection to ensure that the project has been constructed in adherence with the permit.

Between January 1, 2017 and September 30, 2022, DEQ received 19 applications for final Fast-track permits. This number represents only 10.9% of projects under an existing authorization to construct permit. Of those 19 applications, only nine final Fast-track permits were issued by DEQ—meaning only 5.6% of projects have successfully completed both phases of the process and obtained a final permit in the 6-year period since the rules became effective. For the remaining 14 applications, seven applications were returned, three were withdrawn, and four are in review.

Although the Division has received only a limited number of final Fast-track permit submittal requests, these have typically exhibited compliance issues discovered during review of the as-built package or during site inspections. Common issues include failing to appropriately document the constructed BUA, failing to direct stormwater to SCMs for treatment, and an inability to complete construction within the 5-year timeline of the authorization to construct permit.

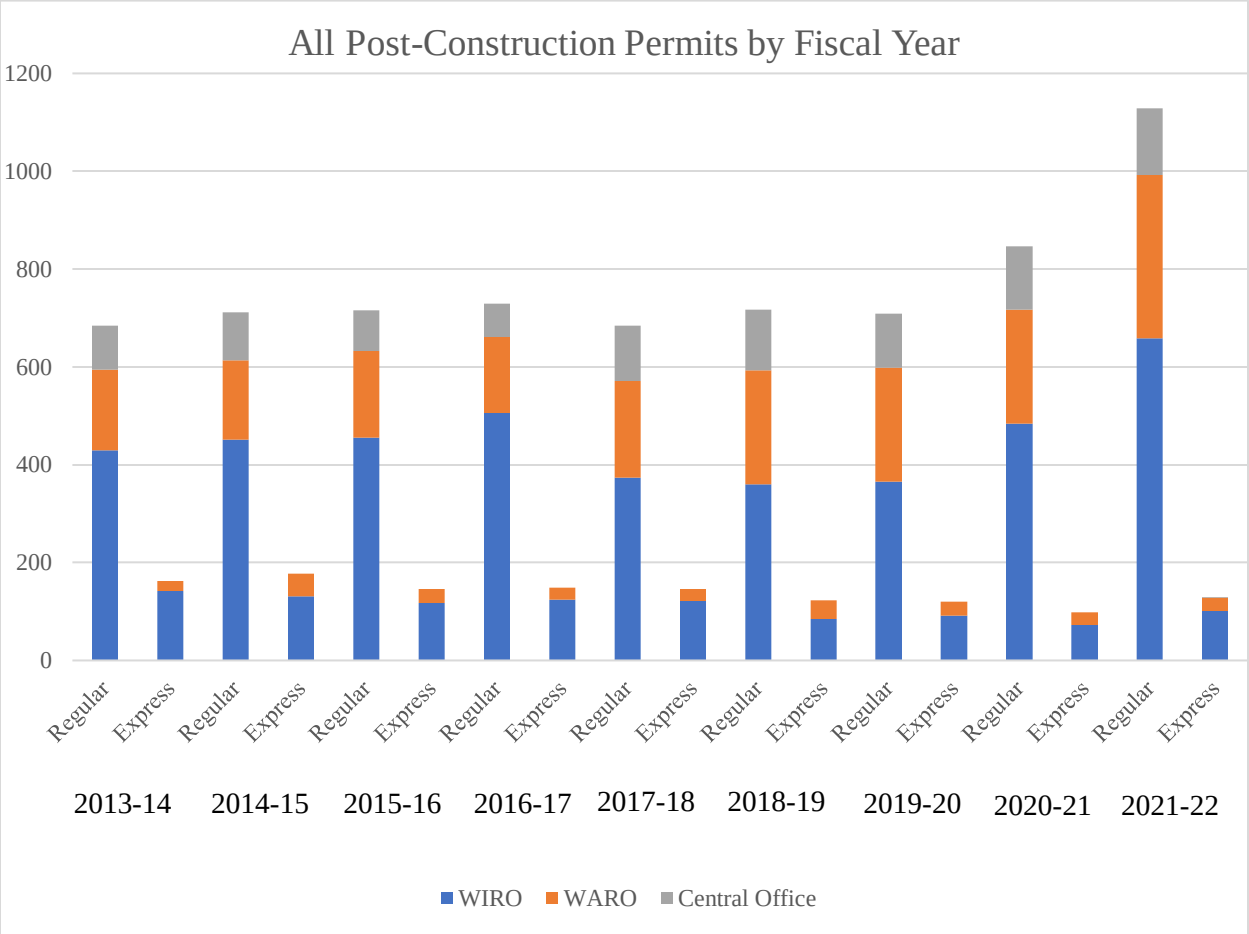
These compliance challenges demonstrate serious concerns with the Fast-track Permitting Program. Together, they call into question the effectiveness and viability of the Fast-track option.

D. Post-construction stormwater workload

To identify opportunities to increase efficiency within the Express and Fast-track Permitting Programs, it is important to understand the workload of the programs and the offices that implement them. The overwhelming majority of post-construction stormwater permits are issued from two main offices: the Wilmington Regional Office (WiRO) and the Washington Regional Office (WaRO). These two offices cover all 20 counties in NC's coastal area. The Division's Central Office staff issue the remainder of the permits for projects in High Quality Waters and Outstanding Resource Waters (HQW/ORW) watersheds.

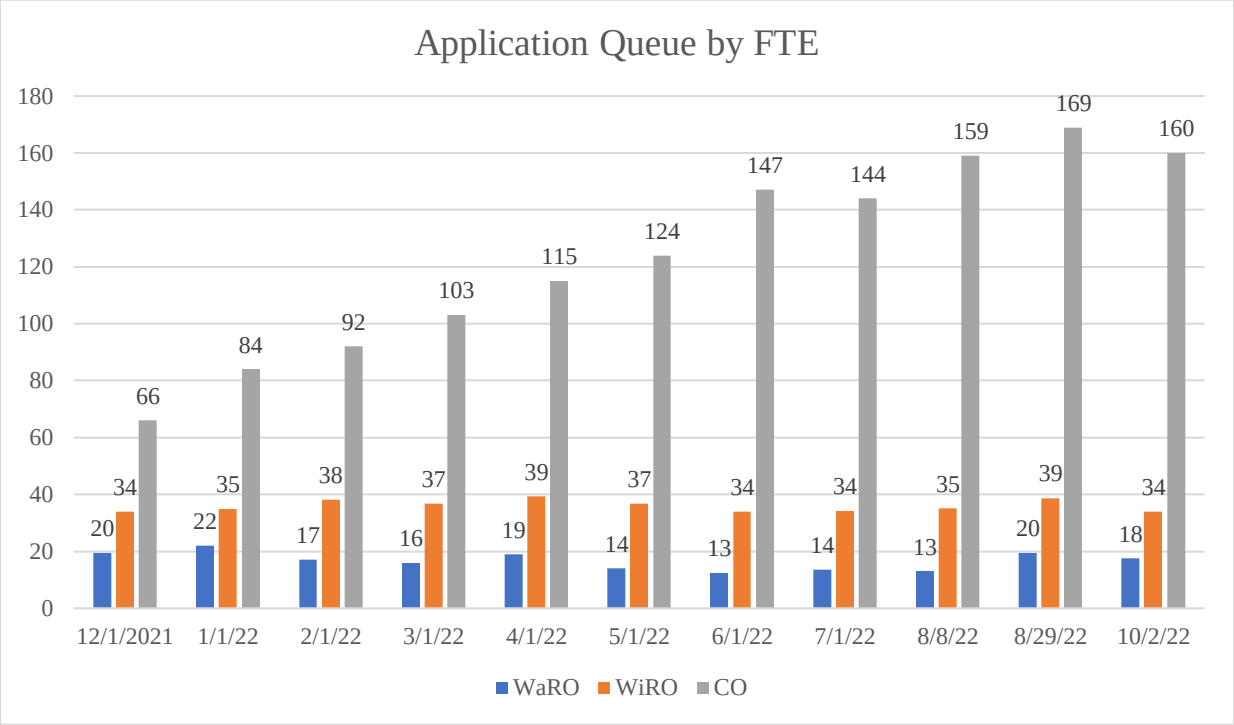
Figure 1, below, shows the number of permits issued each fiscal year between FY2013-2014 and FY2021-2022 through the regular (including Fast-track) and Express programs. The graph shows a relatively steady regular program workload up until FY2020-2021. Starting in FY 2020-2021, the number of regular permits began to increase significantly with 1,011 in FY2021-2022 – the highest in the last nine years. The average number of regular permits issued between FY2013-2014 and FY2019-2020 was 707, while the average between FY2020-2021 and FY2021-2022 was 929. This represents a 40% increase in workload over the previous two fiscal years. Comparing the earlier seven-year average to FY2021-2022 only, the workload has increased by 60%.

Figure 1 - All post-construction permits issued by each office from FY2013-2014 to FY 2021-2022



It is important to evaluate not only the number of permits issued but also the number of projects in each employee's work queue. Figure 2, below, shows the number of applications in the queue per FTE for each office over the last 11 months. When comparing WiRO and WaRO workloads in FY2021-2022 categorized as in-house projects, each review engineer in WaRO averaged 17 projects in their queue while WiRO engineers averaged 36 projects – almost double the workload. Additionally, the Central Office permit load has grown dramatically over the last 11 months and is currently over 4 times higher than WiRO and more than 8 times higher than WaRO. This office has two budgeted FTE but only one is currently filled, despite ongoing efforts to fill the vacancy. The workloads of WiRO and CO staff are unsustainable, and it is forcing them to push reviews and additional information requests deep into the 90-day review period and straining their ability to maintain effective communication with applicants.

Figure 2 - Application queue by FTE per office over the last 11 months



In addition to permit volume, the project type can have a significant impact on workload and processing times. The simplest and quickest projects in terms of processing are typically renewals and transfers followed by minor modifications. In general, the most complicated projects in ascending order are new projects, major modifications, and renewals with major modifications. When digging deeper into the types of projects processed in WaRO and WiRO, it is clear there is a significant difference between the two offices.

Table 1, below, provides the annual average of the number of applications reviewed for various project types for FY2020-2021 and FY2021-2022 in WaRO and WiRO. In the last two years, over 50% of the projects received and reviewed by WaRO have been renewals and minor modifications – the simplest types of projects. Only 6% of the project load was major modifications and renewals with modifications, the most complex project types. In contrast, WiRO not only averaged twice as many total projects over the last two years, but almost 70% of those were among the most complex project types. Although WaRO has seen a larger increase in permits issued over the last two years, the projects have typically been less complex. Meanwhile, WiRO has seen a significant increase in permits issued as well, but the increase has been dominated by more complex projects. Not shown in Table 1 is the CO. New projects are the overwhelming majority (83%) of the permits reviewed in this office with major modifications the next closest project type at 8%.

Table 1 - Average applications reviewed in FY2020-2021 and FY2021-2022 by project type in WaRO and WiRO.

Project Type	WaRO (Average)*	WiRO (Average)*	Total (Average)*
New Projects	140	221	**361**
Minor Modifications	18	78	**96**
Major Modifications	41	103	**144**
Renewals	120	0	**120**
Renewals with Major Modifications	2	228	**230**
Transfers	0	128	**128**
Total	**320**	**758**	**1,078**

*Numbers include multiple reviews of some applications.

Express Permits:

Express numbers in the last two fiscal years have dropped in comparison to the previous seven-year average. The total number of Express permits issued has decreased by 22%. WiRO has seen the largest decrease in Express permits at 25%. WiRO's decrease is largely attributable to a loss of institutional knowledge due to retirements and staff turnover. In FY2018-2019, WiRO lost two staff with over 25 years of experience each to retirement. Since that time, WiRO has struggled to find consistent, experienced staff to handle the Express Program.

WaRO has also seen a decrease of approximately 10% in Express permitting over the last two years. As described above, the workload of WaRO is significantly less than WiRO and typically includes less complex projects than those submitted in WiRO. Because of the lower workload and simpler projects, WaRO has been able to maintain efficient permitting times in the regular permitting program. The smaller workload also allows them to offer a higher level of communication to resolve application and design issues. The efficient permitting times and strong communication in the regular program at WaRO appears to have reduced the demand for Express permitting.

E. Post-Construction Stormwater Efficiencies

Section 6. of S.L. 2022-43 requires DEQ to study approaches to expedite permit issuance in the Post-Construction Stormwater Program. The following section describes pre-application and post-application efficiencies that have been or will be implemented.

Pre-application Efficiencies

One of the most effective ways to improve permit processing times is to ensure that applicants are able to submit a high-quality application. As described above, the post-construction stormwater laws and regulations are a patchwork of revisions developed over the life of the program with varying applicability based on project age and action. This can create confusion about application requirements, design standards, and permit processing. Even consultants and design engineers that are well versed in post-construction stormwater requirements can be uncertain about the rules for different permitting scenarios. To facilitate the submission of quality applications, the Division recommends three strategies: 1) provide post-construction stormwater training for all applicants, 2) develop education and outreach materials for applicants and permittees, and 3) require submittal of Express applications prior to scheduling pre-application meetings.

1) Training

Training for consultants and engineers is a common practice across the Department. Relevant examples include the Division of Water Resources' Surface Water Identification Training and Certification Course and DEMLR's Sedimentation and Erosion Control Design Engineers Workshop. The Division proposes to offer similar training courses that would provide useful information on post-construction stormwater laws and regulations and the elements of a quality application. The course would be offered at least annually and would provide specific information on regulatory requirements, SCM design, legal interpretations, and best practices for completing applications. This would build consistency in understanding among design engineers and consultants and would count for professional development hours.

2) Education and outreach materials

Education and outreach materials are excellent tools for explaining complex processes and technical concepts. These can provide context, examples, and guidance well beyond what typical laws and regulations offer. The Stormwater Program has already developed quite a few materials for various programs, including Post-Construction. The Division can build on these by developing specific products that will target common areas of confusion or misinterpretation. Possible examples include explanations for renewals and transfers prior to modifications, descriptions of innovative treatment versus minimum design criteria, and design information necessary for retaining walls. An Express permitting checklist for applicants could also be helpful. This checklist would include detailed instructions and best practices to facilitate complete and accurate applications.

3) Application submittal prerequisite

The faster turnaround time and more intensive customer service of the Express Program limits the average number of projects that can be reviewed to 8-10 applications per month per reviewer. This results in a limited number of slots for submittal meetings, which puts a priority on those times. Unfortunately, applicants have canceled just before the scheduled meeting on several occasions because they did not have the submittal completed. This creates a gap that cannot be easily filled with the next project in line. This inefficiency could be prevented by requiring the

submittal of all required documentation prior to scheduling the Express submittal meeting. In addition to ensuring applicants are prepared for the scheduled meeting, this would also give staff an opportunity to review the application package prior to the meeting to verify that it is complete and eligible for the Express program.

Post-application Efficiencies

The largest challenge the Division faces in ensuring an efficient permitting process is managing reviewer workloads. As described above, many of DEQ's permit reviewers in the regional offices are faced with unsustainable workloads. The Division has developed a two-phase plan for addressing this: backlog reduction and communication improvement.

Reducing the permitting backlog is crucial to faster processing times for the regular and Express programs. The Division has implemented three strategies to bring down the backlog numbers: (1) hiring permitting assistants, (2) issuing approvals with modifications, and (3) developing review timelines.

1) Permitting Assistants

Permit writers in the ROs spend a significant portion of their time conducting administrative work necessary for documenting the permitting process. To allow the permit writers to focus on technical reviews and permit development, the Division has hired four temporary positions to assist with permit processing. The Permitting Assistant (PA) positions located in the WiRO (2), WaRO (1), and Central Office (1) are responsible for administrative processing and communication with Post-Construction Stormwater applicants. Specific PA duties include entering data from applications and additional information materials into the permitting database, sending confirmation-of-receipt emails for applications and additional information requests, as well as conducting initial reviews, preparations, and providing additional support to improve program efficiencies under any submittal option (regular, Express, or Fast-track). Additionally, PAs review and issue permit renewals and complete other permitting actions such as minor modifications or transfers. They also work with applicants to address technical issues, information needs, and processing questions. These positions will help to decrease the backlog by reducing the time that permit reviewers must put into administrative tasks, allowing them to spend more time on technical reviews and permit writing.

2) Approval with modifications

In order to further reduce the permitting backlog, the Division will issue approvals with modifications. Under this permitting process, applications that are missing administrative or non-engineering information are issued with conditions requiring the submission of that information at a later date. Non-engineering information may include items such as deed restrictions, missing forms, incorrect signatures, and minor technical information not associated with SCMs. This allows the permit reviewer to issue a permit for the project sooner, allowing the applicant to begin construction with the promise of providing the required information. Staff in the regional offices have begun reviewing projects that meet these criteria. The current estimate is that approximately 25% of the project load will be eligible for this process.

3) Review timelines

Review timelines are another best practice that can improve permit processing efficiency. Timelines could be put in place with goals for initial review, additional information requests, and reviews of additional information. For example, goals could include initial review within 10 days of receipt, technical reviews within 45 days of receipt of an initial complete application, no additional information requests beyond 60 days of receipt of an initial complete application, and reviews of additional information responses within 30 days of receipt. Figure 5 provides an example timeline for permit processing. Timelines would set expectations for reviewers and build predictability for the regulated community into the review process. However, these timelines would serve not as a regulation but as a goal, as they can only be achieved with a reasonable workload for permit reviewers.

Figure 5 – Example permitting review timeline

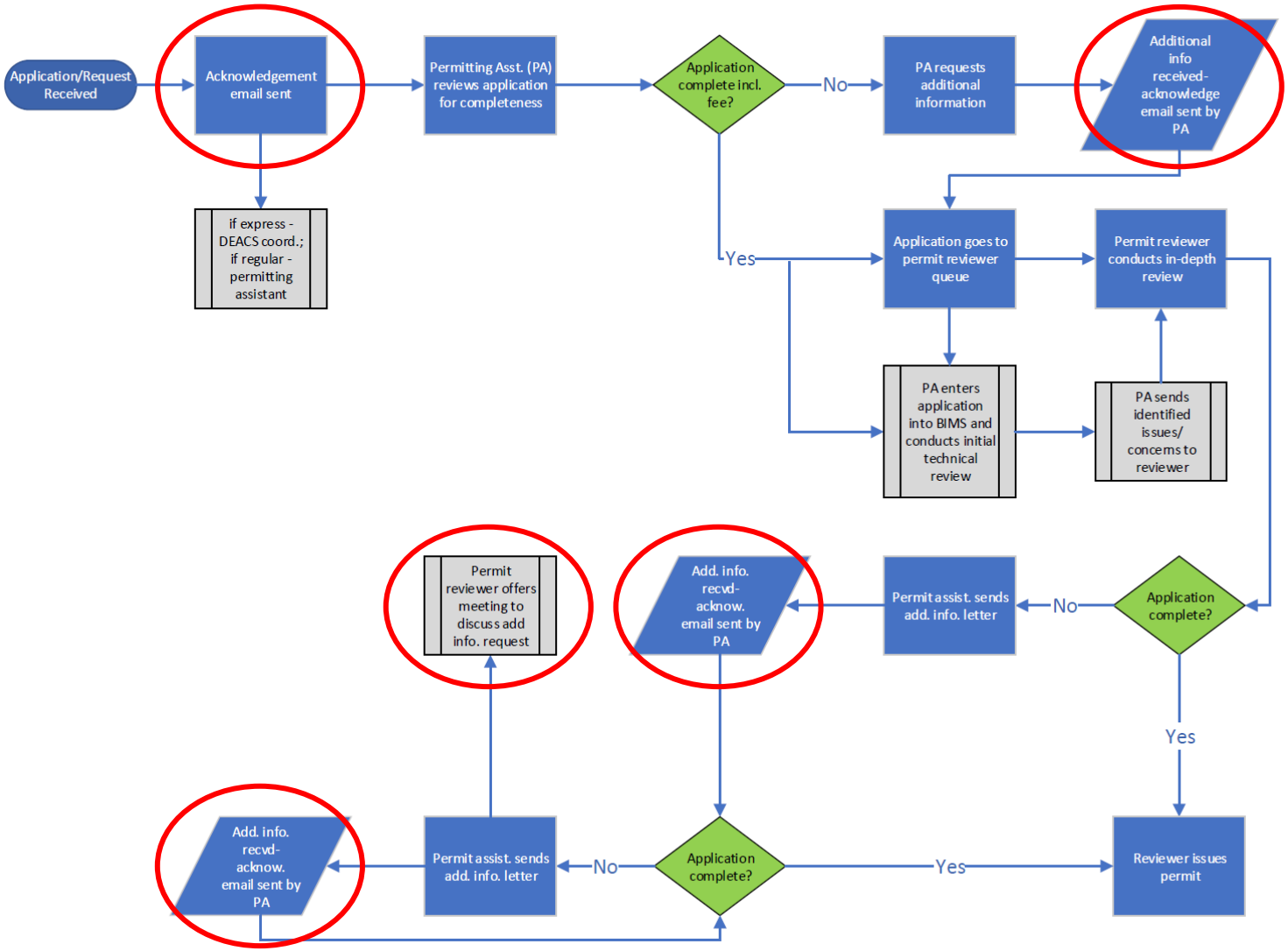
Action	Days																	
	0	**5**	**10**	**15**	**20**	**25**	**30**	**35**	**40**	**45**	**50**	**55**	**60**	**65**	**70**	**75**	**80**	**85**
Receipt of application	■																	
Initial completeness review	■	■	■															
Technical review of complete application				■	■	■	■	■	■	■	■	■						
Deadline for add. info. request				■	■	■	■	■	■	■	■	■	■	■	■			
Review add. info. response											■	■	■	■	■	■	■	
Decision																		■

Communication Improvement:

Once the permitting backlog has been reduced, the Division can focus on improving communication with the regulated community. The Division has developed a permitting workflow (Figure 6) that includes five contacts between permit reviewers/PAs and applicants, dependent on the needs of the applicant. This includes an opportunity for an in-person meeting to discuss the deficiencies and information needed to approve the application after a second additional information request. The goal of the workflow is to improve communication between the reviewer and the applicant and to reduce confusion about informational needs and permitting requirements. As discussed in Section D of this report, the Washington Regional Office has been able to maintain efficient permit processing times. WaRO's lower workload has contributed to

their ability to communicate regularly, which is a key reason for the office's efficient processing. With a reduced backlog, the other offices will be able to communicate more regularly and further improve permitting efficiency.

Figure 6 – Post-Construction Stormwater permit workflow



F. Recommendations for Improving Permitting Efficiency

Section 6. of S.L. 2022-43 requires submission of *"any recommendations for legislative action to improve permitting efficiencies under the programs."* The following section describes the Department's recommendations.

1) Eliminate the Fast-track permitting process

With a reduced workload, more efficient workflow, and improved communication, the regular permitting program can serve applicants in a timely manner. An efficient regular process would eliminate the need for the Fast-track permitting process altogether. The Fast-track process has made up a very small percentage of the total permits issued and has led to very high non-compliance rates. This increases the workload on Division staff and on the design engineers and contractors that must correct the compliance issues after construction is complete.

2) Provide funding to adequately staff the Post-Construction Stormwater Program

The Post-Construction Stormwater Program requires additional staff to address unsustainable workloads and the challenges that stem from this, as described in the previous sections. Six additional staff (5 – WiRO, 1 – CO) would reduce the workload to a manageable level and allow for more effective processing and communication. These positions could be funded through appropriations or through an increase in post-construction stormwater fees. The approximate amount of funding for the six positions would be $755,000 per year.

3) Support improved permitting process through fee adjustments

The Division is currently working with the Department of Information Technology to develop an online submittal and scheduling process to facilitate the Express permitting process. This project is known as the Permit Transformation Process (PTP). Plans for the new process include an online portal that will allow applicants to request an available time slot for a pre-application meeting. As mentioned in Section E, the Division recommends requiring the submittal of application documentation prior to the scheduling of Express pre-application meetings to maximize limited pre-application meeting time slots. As such, the meeting would be confirmed once the applicant has uploaded the required documents on the portal. A permitting assistant would then review the documents for completeness and communicate with the applicant about any missing components required prior to the meeting. To facilitate this capability, the Express fee would need to be increased such that it is not a shared fee in combination with other DEQ Express programs. This could be accomplished by eliminating the combination cap of $4,000.

Additionally, the Division recommends providing the flexibility to increase Express permit fees up to $6,000, dependent on factors such as inflation and program demand. Over the past 3 years, the program has operated with a combined loss of approximately $375,000. Because dedicated review staff for the Express Program are funded exclusively by Express permitting fees, additional staff cannot be hired until the program is operating without a loss. Higher fees would therefore enable the hiring of additional staff and allow the Division to process more Express permits.

As mentioned above, the Department-wide Permit Transformation Process will enable online applications, permitting, and compliance and will further streamline the post-construction stormwater permitting process. The Division recommends the funding of an Environmental Program Consultant to oversee the operation and maintenance, training, customer assistance, and oversight of this platform for the Stormwater Program. The estimated cost of this position is approximately $105,000 per year.

4) Revise post-construction stormwater laws and regulations

Post-construction stormwater laws and regulations have been revised several times since the late 1980s. This has led to intense design and processing complexity for the Post-Construction Program. Multiple different sets of rules can be applicable to projects depending on the proposed design or original permitting date. To simplify these rules while maintaining water quality protections, the Division recommends a thorough review of post-construction stormwater laws and regulations. While this could increase complexity if not addressed carefully, an effective process has the potential to improve efficiency for applicants without sacrificing environmental safeguards. This process would, however, require intense stakeholder cooperation and would be a major draw on Division resources. Therefore, the Division proposes hiring a Rules Revision Coordinator to manage stakeholder coordination and the rules revision process as well as develop education and outreach materials once revisions are complete. The Division recommends that this position be an Engineer II or Environmental Program Consultant. The estimated cost of this position is $105,000 per year.