



HOUSE BILL 870: Sedimentation Act & Other Env.'l Changes.

2025-2026 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	May 5, 2025
Introduced by:	Reps. Brody, Adams, N. Jackson, Zenger	Prepared by:	Jennifer McGinnis
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *House Bill 870 would require:*

- *General Assembly approval of memorandums of agreements (MOAs) between the United States Environmental Protection Agency (USEPA) and the Department of Environmental Quality (DEQ), which govern the State's administration and enforcement of federally required environmental programs.*
- *DEQ to initiate discussions with USEPA to revise any applicable MOAs governing implementation of sedimentation and erosion control requirements in the State.*
- *DEQ to request that USEPA consult DEQ any proposed changes to federal regulations that would impact the State's administration of federal environmental programs in North Carolina, prior to the USEPA's notice of such proposed changes in the Federal Register.*
- *DEQ 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 Housing and Development Committee, with associated funding information.*

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 \(CWA\)](#)).

The USEPA issues a [NPDES Construction General Permit for Stormwater Discharges from Construction Activities \(federal CGP\)](#), however, DEQ has 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 requirements through the [Sedimentation Pollution Control Act of 1973 \(SPCA or the Act\)](#), 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).

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.

Kara McCraw
Director



Legislative Analysis
Division
919-733-2578

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DEQ's authority to administer and enforce the NPDES program in North Carolina is granted and maintained pursuant to a Memorandum of Agreement (MOA) with USEPA, which is available [here](#). The MOA establishes detailed requirements for the State's delegated authority. The MOA provides:

"Prior to taking any action to propose or effect any amendment, rescission, or repeal of any statute, rule, or directive which has been approved by EPA in connection with the State NPDES program; any action to modify program approval documents (e.g., MOA, Program Description or Attorney General's Independent Counsel's Statement); or any action to transfer all or any part of the approved State NPDES program to another State agency or instrument, the State shall notify the Regional Administrator and shall transmit the text of any such change to the EPA Region 4 NPDES and Biosolids Permits Section for review and approval pursuant to 40 C.F.R. § 123.62(b). The State shall keep EPA fully informed of any proposed modification or court action which acts to amend, rescind or repeal any part of its authority to administer the NPDES program. EPA acknowledges that the State has no veto authority over acts of the State legislature and, therefore, reserves the right to initiate procedures for withdrawal of the State NPDES program approval in the event that the State legislature enacts any legislation or issues any directive which substantially impairs the State ability to administer the NPDES program or to otherwise maintain compliance with NPDES program requirements."

BILL ANALYSIS:

MEMORANDUM OF AGREEMENTS BETWEEN DEQ AND USEPA TO REQUIRE GENERAL ASSEMBLY APPROVAL

Section 1 would require that all MOAs between the USEPA and DEQ, the Environmental Management Commission, the Coastal Resources Commission, the Sedimentation Control Commission, and any other board or commission charged under the State's statutes with implementation of State or federal environmental law, be approved by the General Assembly by majority vote of the Senate and the House of Representatives, prior to execution of the MOA. The Governor would be required to transmit any proposed MOAs of this nature, or modifications to such agreements, to the presiding officers of the Senate and the House of Representatives for confirmation by joint resolution. Implementation of the terms of such agreements would be prohibited absent confirmation by the General Assembly.

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

Section 2 would require DEQ, no later than October 1, 2025, to notify USEPA of its intent to initiate discussions to revise the NPDES MOA, and any other agreement with USEPA, that governs the SPCA, and the State's implementation of the NCG01 to streamline the regulatory requirements of the SPCA 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 DEQ personnel and staff of approved local programs. The Speaker of the House of Representatives and the President Pro Tempore of the Senate may each appoint a person to participate in the discussions, and DEQ must provide notice of and access to all discussions and materials related to the negotiations. The appointees must report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate on the progress and results of the discussions.

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DEQ must report to the Environmental Review Commission on the status of their activities pursuant to this section quarterly, beginning January 1, 2026, 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 3 would require DEQ, no later than October 1, 2025, 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 the 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 Review Commission on the status of their activities pursuant to this section quarterly, beginning January 1, 2026, until such time as the General Assembly repeals this reporting requirement.

DEQ TO PROVIDE COPIES OF AGREEMENTS WITH USEPA, AND ASSOCIATED FUNDING INFORMATION

Section 4 would require DEQ, no later than October 1, 2025, 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 Housing and Development Committee. In addition, the Department 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 5 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.