

## **Local Erosion & Sediment Control Program Guidance for the 2019 NCG01 Issuance**

April 1, 2019

Starting April 1<sup>st</sup>, coverage under the North Carolina Construction Stormwater General Permit will be a separate application process than for an erosion and sedimentation control plan approval by the North Carolina Department of Environmental Quality or one of its delegated local erosion & sediment control programs (a.k.a. Local Programs). The NC Construction Stormwater General Permit (permit number NCG010000) affects land disturbing activities equal to or greater than one acre in size, or those under a common plan of development or sale of that size. Because the Environmental Protection Agency (EPA) recognizes the state of North Carolina's Sedimentation Pollution Control Program as a vital component to our federal delegation obligations, coverage under this permit is contingent upon an approved erosion and sedimentation control plan (E&SC plan), in addition to other requirements within the NCG01 permit.

### **Why the change?**

The DEQ's Division of Energy, Mineral and Land Resources is required by the US EPA to issue a specific Certificate of Coverage (COC) to every construction site that disturbs one acre or more, including those under a common plan of development or sale of that size. Under state law (the SPCA), there is no requirement for small projects to obtain plan approval. Small projects may include a single lot, multiple lots, or outparcels that may or may not be contiguous but which collectively total one acre or less in development within the subdivision or other tract. However, projects that require coverage under the NCG010000 also require a plan approved by the NCDEQ or one of its delegated local erosion & sediment control programs.

### **What happens if a plan is submitted before April 1<sup>st</sup> but approved after April 1<sup>st</sup> ?**

Application for the Certificate of Coverage begins April 1, 2019. If an application for an erosion and sedimentation control plan approval is submitted prior to April 1<sup>st</sup>, but approved after this date, the approval notice must instruct the Financially Responsible Party to apply separately for coverage under the NCG01 permit. An NCG01 Fact Sheet exists for answers to related questions.

## What are the changes and how will they affect my program?

- Under the Construction Stormwater General Permit, a Stormwater Pollution Prevention Plan, or *SWPPP*, must be prepared and kept on the project site. Formerly in North Carolina, the erosion and sedimentation control plan, together with the NCG01 Construction General Permit were considered the SWPPP for that site, and you issued them together upon plan approval. Starting April 1, 2019, there will be additional detail sheets that can be included within the E&SC plan that will satisfy the other NCG01 permit requirements for ground stabilization, materials handling, self-inspections, record keeping, and reporting. This will enable the E&SC plan alone to satisfy the requirements of a SWPPP.
- Upon issuance of a plan approval, the Local Program should direct the applicant to the DEQ website ([deq.nc.gov/NCG01](http://deq.nc.gov/NCG01)) for an online application of the NCG01 Certificate of Coverage (COC) and Fact Sheet. A sample letter of approval with instructions for the applicant to electronically apply for their Notice of Intent (e-NOI) has been prepared for your use, if so desired. This letter is accessible on the DEQ SharePoint site for Local Program reporting. In addition, it is recommended to provide the Fact Sheet along with issuance of the plan approval.
- It is now more important than ever to make sure you issue documentation when an erosion and sedimentation control plan is approved and when a project is closed. For approvals, this can be in the form of an approval notification, a Certificate of Plan Approval, or a combination thereof. For close-outs, this can be in the form of a termination notification, a final inspection report, or a combination thereof. Sample close-out language directing the applicant to submit for an electronic Notice of Termination (e-NOT) will be provided on the DEQ's [Construction Stormwater](#) web page. The applicant will need documentation in order to receive coverage under the federal NCG01 permit or when the permittee wishes to terminate coverage under this permit. Starting around June 1, 2020, an annual fee will be charged to the permittee while covered under the federal NCG01 permit. Thus, there will be a financial incentive for permittees to close their permits upon completion of construction.
- Local Programs are not required to verify coverage under the NCG01 permit. However, there will be a tool available on the DEQ-DEMLR website for viewing a list of construction projects with e-NOIs. In addition, some Local Programs have opted to issue an approval letter, then wait until the applicant can provide their Certificate of Coverage before issuing a Certificate of Plan Approval. Both certificates should be kept on the job site in a conspicuous location during normal business hours.

- The precipitation threshold for triggering an inspection within a 24-hour period has changed from 0.5 inch to 1.0 inch. The combined SPCA/NPDES self-inspection form has been edited to reflect this change.
- Enforcement for stormwater violations under the NCG01 still rests with the DEQ.
- Your Memorandum of Agreement will likely be affected by procedural changes to issuance of the NPDES General Stormwater Permit, but not due to plan submittal requirements. If so, the DEQ will work with you to amend your agreement.
- Local Programs no longer have to submit quarterly reports for the EPA. This data will be collected during application for the COC, to be delivered electronically to the EPA. However, you must still provide monthly reports on your SPCA activities, per your Memorandum of Agreement.
- Local Programs are now expected to require erosion and sedimentation control plans for land disturbing activities proposed to be conducted within common plans of development or sale. Doing so will help meet requirements under the state’s delegated NPDES program, and is in agreement with your delegated authority. One Certificate of Coverage will be granted per builder per common plan. For projects requiring plan approvals, the state of North Carolina requires each site operator or developer (i.e., the financially responsible party) to submit his/her own plan as part of the application. See below for a definition and examples of common plans of development. For Programs with already low land-disturbing thresholds or other triggers for plan reviews, this should have no effect on the way you are currently operating.

### How can I tell if I am operating under a larger common plan of development or sale?

As defined under NCG 010000, sites less than one acre, but which are part of a larger common plan of development or sale which is equal to or greater than one (1) acre in size would require a permit. See definition below:

**“Common plan of development”** means a contiguous area where multiple separate and distinct land disturbing activities may be taking place at different times and on different schedules under one common plan. The “common plan” of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities are planned to occur on a specific plot regardless of ownership of the parcels.

The definition is similar to that found in administrative code, 15A NCAC 02H.1002 for post-construction storm water rules and that found in NPDES MS4 permits.

The "common plan of development or sale" is often defined, in part, by the "Erosion and Sedimentation Control Plan" stated in the NCG010000 and is in agreement with that defined by the NC Sedimentation Pollution Control Act of 1973 (SPCA) as a "tract".

A *tract* means "all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership".

Examples of common plans of development or sale include subdivisions, commercial strip malls, college campuses, medical campuses, industrial parks, or well fields where each common plan entails land disturbances equal to or greater than one (1) acre in size. Each parcel or lot may have different owners. Examples of common plans of development or sale exclude isolated, single-family lots or parcels, or a school with a long-term master plan whose phases are conceptual rather than specific to an advertised plan for future development.

**My project will disturb less than one acre of development, but it may be part of a larger common plan of development or sale. How can I tell, and what must I do?**

The EPA states that "In many cases, a common plan of development or sale consists of many small construction projects. For example, an original common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development. All these areas would remain part of the common plan of development or sale."

Furthermore, "If your smaller project is part of a larger common plan of development or sale that collectively will disturb one or more acres (e.g., you are building on 6 half-acre residential lots in a 10-acre development or are putting in a fast food restaurant on a 3/4-acre pad that is part of a 20-acre retail center) then you need permit coverage."

When multiple developers in the same subdivision are collectively disturbing one or more acres, then permits from each developer would be required, regardless of the individual size of disturbance.

## When Can You Consider Future Construction on a Property to be Part of a Separate Plan of Development or Sale?

After the initial “common plan” construction activity is completed for a particular parcel, any subsequent development or redevelopment of that parcel would be regarded as a new plan of development. For example, after a house is built and occupied, any future construction on that lot (e.g., reconstructing after fire, adding a pool or parking area, etc.), would stand alone as a new “common plan” for purposes of calculating acreage disturbed to determine if a permit was required. This would also apply to similar situations at an industrial facility, such as adding new buildings, a pipeline, new wastewater treatment facility, etc. that was not part of the original plan.

Remember, unlike the Construction General Permit, land-disturbing projects or activities as defined under the SPCA - no matter how small and no matter whether they are within or outside of a common plan of development- are still regulated by state law. In this case, erosion control measures are not required by the state of North Carolina, but the developer must still retain sediment from his/her activities on the tract, and must adhere to the mandatory standards for land-disturbing activity in G.S. 113A-57 (1) & (2). Furthermore, local governments with delegated authority for administering the SPCA can require plan approval for disturbances of less than one acre. Thus, some local programs are already requiring plan approvals for each lot within a subdivision, thereby achieving the same result.

For more information on the North Carolina Construction Stormwater General Permit, the Fact Sheet, the detail sheets, or the sample approval letter, please visit the DEQ [Construction Stormwater](#) web page.