

Report on Local Government Implementation of Certain Water Quality Laws

To fulfill the requirements of Section 14 of S.L. 2018-114

SECTION 14. *The Environmental Management Commission shall review the delegated stormwater management programs implemented by local governments to determine:*
(i) which local governments are enforcing stormwater regulations that exceed the requirements of State law, including requirements for inspection and maintenance of stormwater controls and best management practices, and
(ii) which local governments have taken enforcement actions since August 1, 2015, based on requirements in Total Maximum Daily Load (TMDL) calculations or National Pollutant Discharge Elimination System (NPDES) permits that exceed the requirements of State law.

The Commission shall report its findings to the Environmental Review Commission no later than January 1, 2019.

The Environmental Management Commission and DEQ staff oversee a number of stormwater management programs that are implemented by local governments, including:

- NPDES Municipal Separate Storm Sewer Program
- Water Supply Watershed Program
- Neuse and Tar-Pamlico NSW Programs
- Randleman and Falls Lake Protection Programs
- Goose Creek Special Watershed Strategy

However, none of the local governments that implement a stormwater program per the requirements of one of the above programs are considered to be “delegated” as per the language in S.L. 2018-114. For a program to be delegated, a local government would have to **request** to implement a program **as a representative of DEMLR**. However, all of the above programs are specifically designated for implementation by **only** local governments within their respective jurisdictions.

Under the NPDES MS4 Program (federally mandated), **federal laws require that DEQ issue a permit** to the local governments that meet federal population and population density criteria. The MS4 permit held by each local government requires them to tailor a six-pillar stormwater program to their community and its specific water quality issues. These pillars include public education, public outreach, illicit discharge detention and elimination, construction, post-construction and good housekeeping for municipal facilities. The federal MS4 program requires

that each local government create a stormwater management plan that is uniquely suited to the needs of its own jurisdiction.

Under the remainder of the stormwater programs listed above, ***NC Administrative Code requires that local governments implement stormwater controls*** within their jurisdictions. For example, 15A NCAC 02B .0104 (b) states: “All local governments that have land use authority within designated water supply watersheds shall adopt and enforce ordinances that meet the requirements of G.S. 143-214.5 and this Subchapter.” This rule also directs the Environmental Management Commission to approve local water supply watershed ordinances if they ***equal or exceed*** state requirements.

There are only four local governments in the state that are ***delegated*** to implement a stormwater program. All four of these local governments are counties that implement federal NPDES post-construction stormwater requirements in unincorporated areas that are typically regulated by the DEQ. These are the counties of Buncombe, Gaston, Guilford and Henderson.

Figure 1: Interactive Stormwater Permitting Map of Gaston County

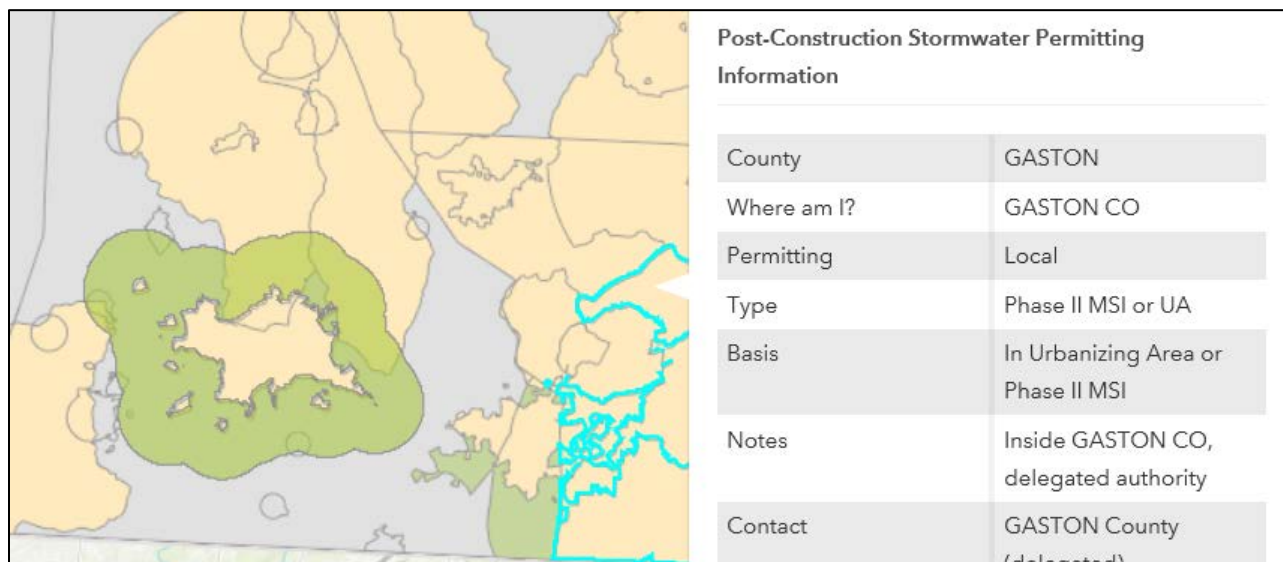


Figure 1 above shows a screenshot of the Interactive Stormwater Permitting Map that indicates that some areas of Gaston County are delegated from DEQ’s authority to the local review per the county’s request. Similar polygons exist within Buncombe, Guilford, and Henderson Counties.

S.L. 2015-286 required that the four counties with delegated stormwater programs provided their ordinances for review by the DEQ. In addition, S.L. 2015-286 required that the four delegated counties update their ordinances to be consistent with state law if there were any

areas where local ordinances exceeded state requirements. Table 1 below summarizes the reviews and subsequent actions that occurred.

Table 1: Review of Delegated Stormwater Programs per S.L. 2015-286

County	DEQ findings and, if applicable, subsequent actions
Buncombe	Stormwater ordinances found to be consistent with state requirements except for a requirement to treat the difference between the pre- and post-development runoff volume for the one-year, 24-hour storm. After discussions with Buncombe County, DEQ staff agreed with the county engineer that this requirement is crucial for flood control, which is under local government authority outside of its delegated stormwater program.
Gaston	Stormwater ordinances found to be consistent with state requirements, with a few exceptions: <ul style="list-style-type: none">- Lots that are less than one acre in size with 10,000 or more square feet of built-upon area were required to provide stormwater control measures in exceedance of state requirements.- Some redevelopment projects must provide stormwater control measures in exceedance of state requirements. On December 1, 2016, Gaston County was directed by DEQ staff to update its local stormwater ordinances to be consistent with state requirements. DEQ staff recently followed up with Gaston County and are awaiting a response.
Guilford	Stormwater ordinances found to be consistent with state requirements.
Henderson	Stormwater ordinances found to be consistent with state requirements.

None of the above delegated counties have taken enforcement actions since August 1, 2015 based on requirements in Total Maximum Daily Load (TMDL) calculations or National Pollutant Discharge Elimination System (NPDES) permits that exceed the requirements of State law.

The Environmental Management Commission appreciates the opportunity to report on local government stormwater programs.