§ 160D-925. Stormwater control.

(a) A local government may adopt and enforce a stormwater control regulation to protect water quality and control water quantity. A local government may adopt a stormwater management regulation pursuant to this Chapter, its charter, other applicable laws, or any combination of these powers.

(b) A federal, State, or local government project shall comply with the requirements of a local government stormwater control regulation unless the federal, State, or local government agency has a National Pollutant Discharge Elimination System (NPDES) stormwater permit that applies to the project. A local government may take enforcement action to compel a State or local government agency to comply with a stormwater control regulation that implements the NPDES stormwater permit issued to the local government. To the extent permitted by federal law, including Chapter 26 of Title 33 of the United States Code, a local government may take enforcement action to compel a federal government agency to comply with a stormwater control regulation.

(c) A local government may implement illicit discharge detection and elimination controls, construction site stormwater runoff controls, and post-construction runoff controls through an ordinance or other regulatory mechanism to the extent allowable under State law.

(d) A local government that holds an NPDES permit issued pursuant to G.S. 143-214.7 may adopt a regulation, applicable within its planning and development regulation jurisdiction, to establish the stormwater control program necessary for the local government to comply with the permit. A local government may adopt a regulation that bans illicit discharges within its planning and development regulation jurisdiction. A local government may adopt a regulation, applicable within its planning and development regulation jurisdiction, that requires deed restrictions and protective covenants to ensure that each project, including the stormwater management system, will be maintained so as to protect water quality and control water quantity.

(d1) A local government is prohibited from adopting any regulation that requires an owner of a privately owned and maintained stormwater control project to make payments to the local government for the purpose of ensuring assets are available for maintenance, repair, replacement, and reconstruction costs of (i) the owner's stormwater control project or (ii) other stormwater control projects within the local government's jurisdiction. A local government may, however, require an owner of a privately owned and maintained stormwater control project to establish, collect, and retain funds for maintenance, repair, replacement, and reconstruction costs for the owner's stormwater control project, which shall not exceed ten percent (10%) of the stormwater control project's original cost of construction and shall be retained by the owner of the system. A local government shall allow a time period of at least five years, beginning when the stormwater control project is accepted by the local government as constructed per the local government's regulations, for the funds to be collected and retained by the owner of the stormwater control project. If funds are collected and retained, a local government can also require those funds be held in a segregated account used solely for the purposes of maintaining, repairing, replacing, and reconstructing the owner's stormwater control project.

(e) Unless the local government requests the permit condition in its permit application, the Environmental Management Commission may not require as a condition of an NPDES stormwater permit issued pursuant to G.S. 143-214.7 that a city implement the measure required by 40 Code of Federal Regulations § 122.34(b)(3)(1 July 2003 Edition) in its extraterritorial jurisdiction.

(f) A local government that issues permits for stormwater management systems within its jurisdiction shall be subject to the provisions governing transfer of permits set forth in G.S. 143-214.7(c2) and (c5). (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2023-108, ss. 13(a), 13.1(c).)