



# MEMORANDUM

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**TO:** Mayor and Members of the City Council

**FROM:** Montré Freeman, City Manager  
Dwan Bell, Public Utilities Director

**DATE:** October 20, 2023

**REF:** Consideration -Adoption of Council Resolution of Commitment to Implement a Compliant NPDES MS4 Program

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***BACKGROUND:***

On August 16, 2023, staff from the North Carolina Department of Environmental Quality (DEQ) conducted a compliance audit of the subject National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit. The audit identified major deficiencies with the specific components of the MS4 permit that were reviewed and provided in the DEQ MS4 Permit Compliance Audit Report. The report listed the serious deficiencies with certain components of the MS4 permit, which constitutes a violation of the Clean Water Act and is grounds for enforcement action.

In accordance with Part VI of the permit and DEQ policy, a new five-year MS4 permit will be issued in response to the audit. As such, the permittee is required to complete the following actions:

1. Respond in writing within thirty (30) calendar days from the date of receipt of this notice to acknowledge these requirements and the intent to comply. ***(NOV received on 9/13/23, response was mailed out on 10/6/23)***
2. Adopt a Council Resolution within sixty (60) calendar days from the date of receipt of this notice. The resolution must declare support for a compliant stormwater management program. A sample resolution with the minimum requirements was enclosed with the letter. An original signed document must be submitted to DEQ. ***(Due by 11/12/23)***
3. Submit documentation for review and comment within one hundred twenty (120) calendar days from the date of receipt of this letter:
  - a. Develop a Draft Stormwater Management Plan (SWMP) which details specific actions, measurable goals, and implementation timelines to bring the stormwater management program into compliance with NPDES MS4

requirements over the new five-year permit term. The SWMP must be documented utilizing the DEQ Phase II MS4 SWMP Template. The SWMP must address all known compliance deficiencies including, at a minimum, the items detailed in the DEQ MS4 Program Audit Report and the self-audit. **(Due by 1/11/2024)**

4. Submit an NPDES MS4 permit application for whichever comes first:
  - a. At least one hundred eighty (180) days prior to permit expiration,or
  - b. Within thirty (30) days of receiving written DEQ concurrence that the submitted SWMP documents a compliant stormwater management program and the MS4 should submit the application including a signed Final Draft SWMP. A new five-year NPDES MS4 permit will be public noticed along with the Draft Final SWMP.
  
5. Respond to comments on the Draft Final SWMP and submit a signed Final SWMP for DEQ approval and final permit issuance. The final DEQ-approved SWMP shall become an enforceable component of the NPDES MS4 permit and an Annual Self-Assessment Template that corresponds to the approved SWMP will be provided.

***ANALYSIS:***

Adoption of Council Resolution of Commitment to Implement a Compliant NPDES MS4 Program is required to be issued a new five-year MS4 permit. A resolution is attached for Council consideration and subsequent adoption, which will then be submitted to DEQ prior to the November 12, 2023 due date.

***STAFF RECOMMENDATION:***

By motion, authorize the Council of City of Elizabeth City to adopt the Council Resolution of Commitment to Implement a Compliant NPDES MS4 Program to remain in compliance with the North Carolina Department of Environmental Quality (DEQ). If the MS4 fails to meet the aforementioned requirements and/or submits a significantly noncompliant Draft SWMP, DEQ may proceed with enforcement. As is stated in Part V, Section A.I (c) of the permit:

*Under the state law, a daily civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit (North Carolina General Statue 143-215.6A). Please note that compliance with the requirements of this notice and/ or issuance of civil or criminal penalties levied by DEQ does not preclude the EPA from carrying out its own enforcement case against the permittee.*



**RESOLUTION #2023-10-01**  
**AFFIRMING THE CITY OF ELIZABETH CITY COUNCIL'S SUPPORT REGARDING**  
**IMPLEMENTATION OF A COMPLIANT NPDES MS4 STORMWATER PROGRAM**

**A RESOLUTION** to develop and implement a compliant stormwater management program that meets the requirements of the **City of Elizabeth City** National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) **Permit number NCS000563** to discharge stormwater, inclusive of the required Stormwater Management Plan to be prepared by the **City of Elizabeth City** and approved by the North Carolina Department of Environmental Quality.

**WHEREAS**, Section 402(p) of the federal Clean Water Act requires NPDES permits for stormwater discharges from municipal separate storm sewer systems; and

**WHEREAS**, in North Carolina, NPDES Permits are issued by the North Carolina Department of Environmental Quality; and

**WHEREAS**, the North Carolina Department of Environmental Quality issued the **City of Elizabeth City** its **2<sup>nd</sup> Renewal of the existing Permit NCS000563** NPDES MS4 Permit for discharge of stormwater on **n.d. (pending until permit has been issued)**; and

**WHEREAS**, the **City of Elizabeth City** was issued Notice of Violation number **NOV-2023-PC-0476** on **13<sup>th</sup> day of September, 2023** for noncompliance with the issued NPDES MS4 Permit; and

**WHEREAS**, the **City of Elizabeth City** acknowledges the specific Notice of Violation requirement to obtain a new individual NPDES MS4 Permit; and

**WHEREAS**, the **City of Elizabeth City** acknowledges the specific Notice of Violation requirement to conduct a self-audit of permit compliance for the balance of permit requirements not specifically audited by the North Carolina Department of Environmental Quality, and to develop a draft Stormwater Management Plan to comply with Section 402(p)(3)(B)(iii) of the Clean Water Act, 40 CFR 122.34(b) and NPDES MS4 Permit requirements, and to submit its draft Stormwater Management Plan to the North Carolina Department of Environmental Quality no later than **120 days from the 13<sup>th</sup> day of September, 2023** for review and approval; and

**WHEREAS**, the **City of Elizabeth City** acknowledges the specific Notice of Violation requirement to adopt a Council Resolution to implement a compliant and enforceable stormwater management program as defined by both the NPDES MS4 **Permit number NCS000563** and the required new Stormwater Management Plan, and said resolution is to be submitted to the North Carolina Department of Environmental Quality no later than **60 days from the 13<sup>th</sup> day of September, 2023**; and

**WHEREAS**, the *City of Elizabeth City* acknowledges the requirement to provide adequate funding and staffing to implement a Stormwater Management Program that complies with its NPDES MS4 Permit and approved Stormwater Management Plan; and

**WHEREAS**, the *City of Elizabeth City* acknowledges that North Carolina Department of Environmental Quality enforcement action and penalties could result from non-compliance with the specific requirements in Notice of Violation number **NOV-2023-PC-0476**; and

**WHEREAS**, the *City of Elizabeth City* acknowledges that any North Carolina Department of Environmental Quality enforcement action and penalties may not prohibit the U.S. Environmental Protection Agency from taking its own enforcement action for non-compliance with the issued NPDES MS4 Permit.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the *City of Elizabeth City* hereby affirms its support for development and implementation of a compliant NPDES MS4 Stormwater Program.

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Kirk E. Rivers, Mayor

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Montré Freeman, City Manager

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Dwan Bell, Public Works Director  
Stormwater Program Administrator

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April Onley, City Clerk

**ADOPTED BY** the City Council of the *City of Elizabeth City*, North Carolina the **23<sup>d</sup> day of October, 2023** and signed in authentication there of the **23<sup>d</sup> day of October, 2023**.

**FORM FOR CERTIFICATION BY THE RECORDING OFFICER**

The undersigned duly qualified and acting City Clerk of the City of Elizabeth City does hereby certify: That the above/attached resolution is a true and correct copy of the resolution authorizing the filing of an application with the State of North Carolina, as regularly adopted at a legally convened meeting of the Elizabeth City City Council duly held on the 25<sup>th</sup> day of September, 2023; and, further, that such resolution has been fully recorded in the journal of

proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand  
this 25<sup>th</sup> day of September, 2023.

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(Signature of Recording Officer)

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(Title of Recording Officer)