



# STATE OF NORTH CAROLINA

## DEPARTMENT OF JUSTICE

ROY COOPER  
ATTORNEY GENERAL

REPLY TO: M. SHAWN MAIER  
ENVIRONMENTAL DIVISION  
smaier @ncdoj.gov

### MEMORANDUM

**TO:** Members of the Sedimentation Control Commission  
**FROM:** M. Shawn Maier, Associate Attorney General  
**DATE:** January 23, 2014  
**RE:** **Analysis of the Sedimentation Control Commission's authority to approve proposal for implementation of Sedimentation Control Program by DEMLR's Energy Section**

**ISSUE:** Can the Sedimentation Control Commission (Commission) approve the Division of Energy, Mineral and Land Resources' (DEMLR) proposal for implementation of the Sedimentation Pollution Control Act (SPCA) by the Energy Section of DEMLR?

**ANSWER:** Yes. The Commission has authority; however, modifications will need to be made to existing local program memorandums of agreement (MOAs) to return exclusive authority over land disturbing activities for oil and gas development to the Commission.<sup>1</sup>

### Background

At the direction of the legislature, the Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, is studying the "development of a coordinated permitting program for oil and gas exploration and development activities using horizontal drilling and hydraulic fracturing treatments in order that a single comprehensive environmental permit may be issued to a permit applicant to govern the applicant's exploration and development activities at a site, including ... well construction ..." S.L. 2013 c. 365 s. 2.(a). In conjunction with this task, the Commission has been asked to consider ways in which the Energy Section of DEMLR can implement the Commission's regulatory program over land-disturbing activities related to the exploration and development of oil and gas.

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<sup>1</sup> This memorandum has not been prepared and approved in accordance with the procedures for issuing an Attorney General's Opinion.

## DEMLR's Proposal

In order to incorporate the requirements of the SPCA into the comprehensive environmental permit being studied by the Mining and Energy Commission, DEMLR has proposed a two-part process for the Commission to undertake: (1) amend MOAs with existing local programs in areas with oil and gas potential to return jurisdiction to the Commission over land-disturbing activities related to oil and gas exploration and development; and (2) request that the Secretary of the Department of Environment and Natural Resources (Secretary) assign to DEMLR's Energy Section the administration and enforcement of the SPCA for land-disturbing activities related to oil and gas exploration and development and present to the Secretary any desired conditions or requirements that the Commission would ask of the Energy Section related to implementation of the Commission's regulatory program.

### *1. Amend memorandums of agreement with existing local programs*

The scope of land-disturbing activities over which the Commission has exclusive jurisdiction is limited. The Commission retains exclusive jurisdiction over land-disturbing activities conducted or funded by a State or Federal agency, or conducted by a local government or person with the power of eminent domain. N.C. Gen. Stat. §113A-56(a). The list of land-disturbing activities in N.C. Gen. Stat. §113A-56(a) over which the Commission retains exclusive jurisdiction does not currently include oil and gas exploration and development.

The Commission shares concurrent jurisdiction with local governments that the Commission has authorized to operate delegated local programs. N.C. Gen. Stat. §113A-56(c). Where a local government has been authorized to operate a delegated local program, land-disturbing activities conducted for oil and gas exploration and development are subject to concurrent jurisdiction. The Commission's concurrent jurisdiction is limited to the power to review plans approved by the local government and require any changes necessary to comply with the SPCA or administrative rules, review compliance activities taken by a local government and take appropriate compliance actions, and assume administration of a local program if a local government fails to correct deficiencies identified by the Commission. N.C. Gen. Stat. §§ 113A-56(c), 113A-60(c). The Commission does not have the authority to review plans rejected by a local program, unless the submitting party appeals the decision directly to the Commission. In order to return jurisdiction over land disturbing activities for oil and gas development to the Commission, the MOA would need to be modified to reflect the return of jurisdiction to the Commission for oil and gas land-disturbing activities.

### *2. Request that the Secretary assign administration of the SPCA with regard to oil and gas exploration and development land-disturbing activities to the Energy Section*

The sedimentation control program developed by the Commission is "administered by the Secretary under the direction of the Commission." N.C. Gen. Stat. §113A-55. The SPCA authorizes the Secretary to "employ necessary clerical, technical, and administrative personnel, and assign tasks to the various divisions of the Department for the purpose of implementing this Article." N.C. Gen. Stat. §113A-55 (emphasis added). Since the Secretary administers the sedimentation control program under the direction of the Commission, the Commission may request the Secretary assign DEMLR's Energy Section to review and enforce erosion control plans for land-disturbing activities related to oil and gas exploration and development.



North Carolina Department of Environment and Natural Resources

Pat McCrory, Governor

John E. Skvarla, III, Secretary

**ASSIGNMENT OF AUTHORITY**

**In accordance with the authority granted to me by NCGS 113A-55, and in accordance with NCGS 143B-10, I hereby assign the employees of the Energy Section of the Division of Energy, Mineral, and Land Resources the following authority:**

**To administer the Sedimentation Pollution Control Act of 1973, as amended (the Act), and 15A NCAC, 4A et seq., as amended, for land-disturbing activities associated with oil and gas well exploration and development as authorized by the Oil and Gas Conservation Act. The following conditions shall apply to the assignment:**

**GENERAL CONDITIONS OF PROGRAM:**

A. The Energy Section will require that erosion and sediment control plans be prepared in general accordance with the design standards in the most current revision of the *Erosion and Sediment Control Planning and Design Manual* published by the Division of Energy, Mineral, and Land Resources and approved by the Sedimentation Control Commission (the Commission).

B. The Energy Section shall review erosion and sedimentation control plans within the time limits set forth in the Act.

C. The Energy Section shall monitor oil and gas well exploration and development projects for compliance with the Act, and rules promulgated pursuant to the Act, and conduct Sedimentation Compliance Inspections on a monthly basis, at a minimum, at active projects.

D. The Energy Section shall issue a Notice of Violation to the financially responsible party conducting a land-disturbing activity in violation of the Act and rules promulgated pursuant to the Act, and shall refer violations to the Director, Division of Energy, Mineral, and Land Resources (the Director) if further enforcement action is warranted. The issuance of any civil penalty assessment, stop work order, restoration of sedimentation damage or request to the N. C. Department of Justice for injunctive relief shall be made by the Director.

E. The Energy Section will provide sufficient technical and administrative training to its employees such that the objectives of the program are fulfilled.

**G. Basic Objectives of Program**

Erosion and sediment control plans approved by the Energy Section shall meet the following control objectives:

1. Identification of Critical Areas- On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, will be identified and receive special attention.
2. Limited Time of Exposure- All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time consistent with good construction and maintenance practices.
3. Limit Exposed Areas- All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
4. Control Surface Water - Surface water runoff originating upgrate of exposed areas will, to the extent practical, be controlled to reduce erosion and sediment loss during the period of exposure.
5. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
6. Manage Storm Water Runoff - When the increase in the velocity of storm water runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans will include measures to control the velocity up to and including the discharge point so as to control accelerated erosion of the site and increased sedimentation of the watercourse.

H. The Energy Section acknowledges its obligation to implement its program consistent with the standards for land-disturbing activities promulgated by the Sedimentation Control Commission. Attached and incorporated herein by reference is a copy of the Sedimentation Pollution Act of 1973, as amended, and a copy of the implementing Administrative rules codified at Title 15A of the N. C. Administrative Code, Chapter 4, 15A NCAC, 4A et seq., as amended.

#### SPECIFIC CONDITIONS OF PROGRAM:

A. The Energy Section will incorporate the components of the State's Sedimentation Inspection Report into a comprehensive oil and gas operation inspection report and will ensure that its components are evaluated as part of each comprehensive inspection of an oil and gas exploration and development project, and submit the report form to the Commission for approval of the erosion and sedimentation control components of the report.

B. The Energy Section will develop standard document text for correspondence concerning plan review and approval, compliance monitoring and notices of violation, and submit the text to the Commission for approval.

C. The Energy Section shall employ sufficient qualified staff to implement the erosion and sedimentation control program, and shall provide adequate funding for travel, equipment and training to implement the program.

D. The Energy Section is authorized to charge a fee for the review of plans in accordance with the Act.

#### PROGRAM REVIEW AND EVALUATION:

The Commission shall review and evaluate Energy Section's implementation of the erosion and sedimentation control program at least on an annual basis.

#### ANNUAL REPORT TO THE SEDIMENTATION CONTROL COMMISSION

The Energy Section will present an annual report to the Commission. The report shall include, but not be limited to, the estimated number of acres of land-disturbing activities monitored, the status of all training efforts, results observed, and planned emphasis areas for the next twelve months. This report will be presented at the first scheduled Commission meeting of each calendar year.

Signed: \_\_\_\_\_

John E. Skvarla, III, Secretary, Department of Environment and Natural Resources

Date: \_\_\_\_\_

Cc: Sedimentation Control Commission  
Lacy M. Presnell, III, General Counsel  
Tracy E. Davis, PE, CPM, Director, DEMLR

# MEMORANDUM OF AGREEMENT

BETWEEN

THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

AND

**\*LOCAL GOVERNMENT\***

This MEMORANDUM OF AGREEMENT is entered into between the **North Carolina Sedimentation Control Commission** (hereinafter, “Commission”) and **\*Local Government\*** (hereinafter, “\*Local Government\*,” collectively, “Parties”) for the purpose of clarifying their roles in the enforcement of the Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. Ch. 113A Art. 4 and any rules adopted pursuant to the Act (hereinafter collectively, “SPCA.”)

## **Part I. Local Program Creation.**

### A. Model Ordinance

The Parties agree that the Commission shall do the following:

1. Per N.C. Gen. Stat. § 113A-54 (d) (1), provide a model erosion and sedimentation control ordinance (hereinafter, “model ordinance”) for adoption by local governments who wish to operate a delegated local erosion and sedimentation control program (hereinafter, “local program.”)
2. Update its model ordinance upon changes in the SPCA.

### B. Proposed Ordinance Review

The Parties agree that:

1. Local governments who choose to create and operate a local program may do so by ordinance (hereinafter, “local program ordinance”.) However, the local government must submit the proposed local program ordinance to the Commission staff for

review prior to adoption. Local governments must adopt the ordinance prior to submission to the Commission for approval.

2. North Carolina General Statute § 113A-60(b) requires the Commission to review, approve, approve as modified, or disapprove proposed local program ordinances based upon the minimum requirements of the SPCA.
3. The Commission shall review a local program ordinance submitted and, within 90 days of receipt thereof, shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved.
4. The local program's erosion and sedimentation control standards must equal or exceed those of the SPCA.
5. The \*Local Government\* has an existing local program and an ordinance approved by the Sedimentation Control Commission.

## **Part II. Responsibilities and Expectations of the Commission.**

### **A. Local Program Review**

The Parties agree that the Commission shall do the following:

1. Review periodically approved local programs for compliance with the SPCA. The results of the reviews shall be presented at the next quarterly meeting of the Commission.
2. If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement.
3. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

#### B. Training and Education for Local Programs

The Parties agree that the Commission shall provide the following:

1. Educational programs in erosion and sedimentation control directed toward persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of the SPCA and erosion and sedimentation control rules, ordinances, regulations, and plans.
2. Manuals and publications to assist in the design, construction and inspection of erosion and sedimentation control measures.
3. Periodic reviews of local erosion and sedimentation control programs and through the reviews provide recommendations to improve program administration.
4. Technical assistance in review of draft erosion and sedimentation control plans for complex activities.

#### C. Concurrent Jurisdiction

The Parties agree that the Commission shall maintain concurrent jurisdiction with the local government for land-disturbing activities and may take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

#### D. Exclusive Jurisdiction

The Parties agree that the Commission shall maintain exclusive jurisdiction to administer the SPCA for all land disturbing activities that:

1. Are outlined in North Carolina General Statute § 113A-56; or
2. Relate to oil and gas exploration and development.



### **Part III. Responsibilities and Expectations of the Local Government.**

#### **A. Enforcement**

The Parties agree that the local government shall administer its own local program ordinances, through the following:

1. Enforce the provisions of the SPCA.
2. Administer the SPCA for all land-disturbing activity within its jurisdiction, including existing sites at the time the local government received program delegation. The Commission may continue to administer the SPCA over specific projects under enforcement action upon mutual agreement with the local government. The local program is not responsible for activities over which the Commission has exclusive jurisdiction.
3. Employ a sufficient number of qualified personnel. Qualified personnel shall be competent to review sedimentation and erosion control plans and conduct inspections of land-disturbing activities.
4. Provide adequate resources for plan review and compliance inspections.

#### **B. Reporting**

The Parties agree that the local government shall provide the following reports/information:

1. Monthly activity reports to the Commission in the form adopted by the Commission.
2. Copy of Notices of Violation to the appropriate regional office of the Division of Energy, Mineral, and Land Resources.
3. Current contact information for their local program to the Division of Energy, Mineral, and Land Resources.

#### **C. Sediment and Erosion Control Plans for Land-Disturbing Activity Review**

The Parties agree that the local government shall review erosion and sedimentation control plans for land-disturbing activity (hereinafter, “plans”) submitted to its local program under the following standards:

1. Review plans within 30 days of receipt of a new plan and within 15 days of a revised plan.
2. Approve, approve with modifications, approve with performance reservations, or disapprove draft plans in conformance with the basic control objectives contained in 15A NCAC 04B .0106.
3. Notify in writing the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved within 30 days of receipt of a new plan and within 15 days of a revised plan.
4. Include in written notifications of plan approval the following:
  - a. reference to NPDES General Stormwater Permit NCG 010000,
  - b. expiration date of the approval,
  - c. the right of periodic inspection, and
  - d. condition the approval upon the applicant's compliance with federal and State water quality laws, regulations and rules.
5. Enclose with all written permit notifications the following
  - a. NPDES General Stormwater Permit NCG 010000, and
  - b. Certificate of Approval for posting at the site of the land-disturbing activity.

D. Inspection

The Parties agree that the local government shall inspect all sites undergoing land-disturbing activity under the following standards:

1. Periodically and regularly inspect sites undergoing land-disturbing activity within its jurisdiction. Periodically and regularly means with sufficient frequency to effectively monitor compliance with the SPCA and rules adopted pursuant to the SPCA and the local erosion and sedimentation control ordinance.
2. Document all inspections in writing, including electronic documents.
3. Inspection reports shall include, at a minimum, all information in the model sedimentation inspection report developed by the Commission.

4. Maintain inspection records for active projects in accordance with State and local record retention policies.

E. Enforcement

The Parties agree that the local government shall enforce its local program ordinance under the following standards:

1. Issue Notices of Violation (hereinafter, "NOV") for any significant violation of the SPCA, rules adopted pursuant to the SPCA, or the local erosion and sedimentation control ordinance documented in an inspection report. An NOV shall be issued to the persons responsible for the violations, pursuant to N.C. Gen. Stat. § 113A-61.1.
2. The NOV shall specify the following:
  - a. describe the violation with reasonable particularity
  - b. request that all illegal activity cease
  - c. the actions that need to be taken to comply with the SPCA and the local ordinance
  - d. a date by which the person must comply with the SPCA and the local ordinance
  - e. inform the violator that any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and the local ordinance
3. Undertake appropriate enforcement actions, including injunctive relief, or assessment of civil penalties for an initial penalty or a daily penalty for continuing violations.
4. Require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.

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DRAFT

IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the \_\_\_\_\_ day of \_\_\_\_\_ 2014.

**SEDIMENTATION CONTROL COMMISSION**

**\*LOCAL GOVERNMENT\***

By: \_\_\_\_\_  
Robin K. Smith  
Chair  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name #1  
Mayor/Council Chair/Commissioner  
Dated: \_\_\_\_\_

**DIVISION OF ENERGY, MINERAL AND LAND  
RESOURCES**

By: \_\_\_\_\_  
Tracy E. Davis  
Director  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name #2  
Mayor/Council Chair/Commissioner  
Dated: \_\_\_\_\_

**Approved as to Form**

**Approved as to Form**

\_\_\_\_\_  
Counsel to the Commission  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Name #3  
Local Government Attorney  
Dated: \_\_\_\_\_

## Appendix I.

### NORTH CAROLINA GENERAL STATUTES

#### *Sedimentation Pollution Control Act (Ch. 113A Art. 4)*

(selected statutes)

#### **§ 113A-54. Powers and duties of the Commission.**

(d) In implementing the erosion and sedimentation control program, the Commission shall:

- (1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.

#### **§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (1) Conducted by the State.
- (2) Conducted by the United States.
- (3) Conducted by persons having the power of eminent domain other than a local government.
- (4) Conducted by a local government.
- (5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion

and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

(1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s.2.)

**§ 113A-60. Local erosion and sedimentation control programs.**

- (a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.
- (b) The Commission shall review each program submitted and within 90 days of receipt thereof shall

notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

- (c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.
- (d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance

adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program.

Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

- (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1.

(1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3.)





North Carolina Department of Environment and Natural Resources  
**North Carolina Sedimentation Control Commission**

Robin K. Smith, Chair

Pat McCrory, Governor  
John E. Skvarla, III, Secretary

\*DATE\*

North Carolina Department of Environment and Natural Resources  
Attention: John E. Skvarla III, Secretary  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Dear Secretary Skvarla:

On \*DATE\*, the North Carolina Sedimentation Control Commission approved the assignment of an erosion and sedimentation control program for land disturbing activities associated with oil and gas exploration and development as authorized by the Oil and Gas Conservation Act, N.C.G.S. 113-381 et seq., to the Division of Energy, Mineral, and Land Resources' (DEMLR) Energy Section pursuant to N.C.G.S. 113A-55. Following the recommendations of DEMLR staff and the Sedimentation Control Commission's counsel, the Commission determined that the administrative rules and regulatory program being developed and adopted by the Mining and Energy Commission and implemented by DEMLR's Energy Section met or exceeded the minimum requirements of the Sedimentation Pollution Control Act of 1973 (SPCA) and the rules adopted pursuant to the SPCA. The program assignment is effective \*DATE\*. Attached is the Assignment of Authority for your signature to confirm your agreement with the terms and conditions that must be met.

DEMLR's Land Quality Section staff, responsible for oversight of all SPCA program implementation statewide, will periodically review this program for consistency with the SPCA and report its findings to the Sedimentation Control Commission.

We encourage DEMLR's Energy Section to work closely with DEMLR's Land Quality Section as they implement this program.

Sincerely,

Robin K. Smith, Chair  
Sedimentation Control Commission

Cc: Tracy E. Davis, PE, CPM, Director, Division of Energy, Mineral and Land Resources  
Toby Vinson, PE, CFM, Acting Chief and Chief Engineer, DEMLR Land Quality Section  
Walt Haven, PG, Oil and Gas Program Supervisor, DEMLR Energy Section  
Matthew B. Poling, PE, Assistant State Sedimentation Specialist, DEMLR Land Quality Section

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