

## **Local Program Report to the SCC Johnston County Follow Up, February 21, 2024**

On May 23, 2023, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Johnston County Erosion and Sedimentation Control Program conducted on March 14, 2023. The Commission voted to continue delegation with review of the County program for a period of 9 months with a follow up report to be presented during the 2024 Q1 meeting. The following issues and required corrective actions were noted during the initial review:

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0118(c). A copy of the property deed should be retained in each project file.
- Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the erosion and sediment control plan must include the landowner's written consent for the applicant to submit a plan to conduct the land-disturbing activity. G.S. 113A-54.1(a). When the landowner and financially responsible party differ, written consent from the landowner should be obtained and retained in the project file.
- Once a complete application is received, plans are to be reviewed and the person submitting the plan notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). Notice of Disapproval and modifications should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) & (c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include construction details and maintenance notes for all proposed measures prior to approving plans. To ensure that proposed measures are adequate for the respective drainage area, staff should require delineation of proposed drainage areas.
- The County shall employ a sufficient number of qualified personnel and provide adequate resources for plan review and compliance inspections. MOA Part III.A.3 & 4. The County will need to work towards increasing the full-time equivalents contributing to the program in order to increase inspection frequency and sufficiently monitor sites for compliance with the SPCA.

### **Summary of Continue Review Period:**

Throughout the continued review period, DEMLR requested the County provide a project list, a copy of any enforcement documents issued, and inspection reports for various projects. The

County has provided follow-up regarding the issues noted during the initial review in March. During the continued review period from March through December 2023 the county conducted 256 plan reviews, issued 88 approvals and 165 disapprovals. When a plan was found to be inadequate, review comments and reasons the plan was not approvable were sent back to the applicant. For reporting purposes, when review comments were sent back to the applicant, the County counted it as a disapproval. However, an official notice of disapproval was not always being sent in this process. The County conducted 854 inspections during this period and issued 14 NOVs. The County also used their ability to issue a stop work order or place a hold on building permits or other developmental inspections 13 times.

DEMLR staff conducted a day of oversight inspections on 11/24/2023 and a formal follow up review on 1/29/2024. Throughout the continued review period, the County has worked to close completed projects off of their open projects list. The County currently reports that they have 208 open projects. At the time of the follow up review, staff indicated that this project count may not fully reflect the number of open erosion control plans due to the way the County has tracked projects in the past. DEMLR staff requested that the County obtain and maintain a complete and accurate accounting of open erosion control plans and approved acreage moving forward. The current jurisdiction of the County program covers all unincorporated areas of the County and within the corporate limits and ETJ of the Towns of Archer Lodge, Benson, Pine Level and Wilsons Mills. As part of the County's evaluation of the current and future workload they have decided to terminate their interlocal agreements granting them erosion and sediment control jurisdiction within the 4 municipalities that they are currently covering. These terminations become effective on April 1, 2024, at which time currently approved plans will be handed over to the DEMLR Raleigh Regional Office for inspections and enforcement moving forward. All new plans within these areas will be directed to DEMLR for review and approval following the above date. The new jurisdiction of the County program will only cover the unincorporated areas of the County. The County also indicated that they will be requesting 1 new position in the 24-25 FY Budget. However, the description of this position and amount of contribution to the ESC program has not yet been finalized.

The Following is a summary of a few projects reviewed during the continued review period and during the formal follow up review:

**1. Norris Rd:**

This project was reviewed during the initial review in March. At the time of the initial review, this site was out of compliance for minor offsite and a number of other corrective actions needed. Following the initial review, the county conducted 6 inspections on this project. The most recent inspection conducted on 1/4/2024 noted that the site was out of compliance needing to establish groundcover on completed lot pads, clean sediment off of the roads and maintain measures. On the day of the follow up review grading was still underway. The permanent primary orifice pipe and secondary spillways of the riser structures in the sediment basins had been installed and needed to be closed off to ensure that water did not bypass the skimmer device. This was also noted previously during the joint inspections conducted in November. Multiple stockpiles throughout the site needed to be stabilized if not actively being worked and silt fence installed around the toe of the piles. Sediment had accumulated on the internal roads and curb inlet

protection measures had not been installed along these sections. A copy of the approved plan and self-inspection records were not available onsite. Rills that had formed along slopes surrounding multiple basins needed to be repaired and then restabilized. Sediment had accumulated in the forebay of one of the basins and the forebay berm had begun to erode into the basin itself. Large rills had formed above the stormwater pipe discharging into the basin which would also need to be repaired. Completed lot pads and graded areas needed to be stabilized throughout the site. Grass had been established along the slopes of the berm along the entry road. No offsite sedimentation was noted. Overall, this site was out of compliance.

## **2. Novo Nordisk Early Grading Package:**

This plan was recently reviewed and approved by the County. This project consists of 51.04 acres disturbed for industrial development and is located within the Upper Neuse Subbasin of the Neuse River Basin. The file for this project included the approved plan, design calculations, a copy of the property deed, the FRO form and previous inspection reports. The file also contained a letter of authorization from the landowner authorizing the FRP to “act as an agent” with respect to permitting associated with the project. It is recommended that moving forward letters of consent between landowners and FRPs specifically state the landowner is giving consent for the FRP to submit a plan to conduct the land-disturbing activity as stated in G.S. 113A-54.1(a). The County received the complete package for this project on 7/20/2023 and the comments sent back to the applicant on 8/18/2023. The plan was approved on 8/24/2023 following a resubmittal from the applicant. No official review decision was sent within 30 days of receiving the plan. This project also had a revised plan that expanded the limits of disturbance. This revised plan was received by the County on 10/16/2023 and review comments were sent back to the applicant on 11/7/2023. The Applicant responded on 11/9/2023 with additional information and the County issued the approval letter on 11/17/2023. No official review decision was sent within the appropriate 15-day timeframe for these revised plans. The approved plan appeared to be adequate. Specific maintenance notes for each proposed measure and a drainage area map was included in the plan. Construction on this project began in August of 2023 and the County had conducted 4 inspections prior to the follow up review. On the day of the follow up review, grading was underway, and the perimeter measures had been installed. Basins throughout the site appeared to be installed properly and the basin slopes had been stabilized. Diversion ditches had been matted and check dams had been installed. The construction entrance appeared to be maintained and functioning. Silt fence throughout the site appeared to be well maintained. Overall, this site was in compliance.

## **Conclusion:**

Throughout the continued review period, the County provided inspection reports for a few additional projects as well. Only 3 inspections were conducted on Eatmon Landing Ph. 2 during the continued review period. Inspections were conducted on 4/25/2023, 7/25/2023 and 9/20/2023. The County also conducted 15 inspections on NW 13. Ph. 2 during this same period. Staff have worked to increase their inspection frequency and have made progress towards a monthly inspection frequency. The County is currently inspecting sites approximately every 2-3 months. A precise average inspection frequency is difficult to calculate without an accurate open project count. Through conversations with County staff, this current workload does not appear

to be sustainable in the long term. The County has decided to terminate their interlocal agreements as a step to decreasing the program's workload and staff have worked to close out completed projects from their project list. Staff also stated that an additional staff position would be requested in the upcoming fiscal year budget proposal. This potential position's contribution to the program has not yet been determined. The County will need to continue to show improvement in inspection frequency while still ensuring that thorough inspections are conducted and detailed reports are provided. The County has addressed many of the previously noted deficiencies. Staff stated that documentation of property ownership and a letter of consent, when applicable, is required prior to approval of an erosion and sediment control plan. The recently approved project file contained both items. Staff have ensured that plans include maintenance notes and a construction detail for all proposed measures. The County still needs to adjust the plan review process to ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. During the initial review, the County was often sending a letter of disapproval when plans were found to be inadequate. These letters were not always being sent within the appropriate 30- and 15- day timeframes. Since the initial audit, the County has been sending review comments stating the reasons a plan was not approvable via emails. These emails did not always include an official review decision nor the required language notifying the applicant of their right to appeal the decision. Therefore, an official review decision was still not always being sent to the applicant within the appropriate timeframe. One of the other items noted during the initial audit was that the County was not sending their letters of disapproval with the ability to track receipt. The County responded to this item with a proposed procedure for issuing notices of disapproval via emails. DEMLR staff met internally with their legal counsel and concluded that the proposed procedure would not meet the requirements required of SPCA delegation to track receipt of notices of disapproval. DEMLR staff discussed with County staff during the follow up review that moving forward, in accordance with G.S. 113A-61, when a plan is found to be inadequate and is being disapproved, an official letter of disapproval which includes language notifying the applicant of their right to appeal the decision should be sent and these letters should be sent with the ability to track receipt by the applicant.

The County has addressed many of the deficiencies that were noted during the initial audit. The remaining deficiencies related to plan review timeframes and disapproval letters still need to be addressed. The County will need to make adjustments to the plan review process and continue to work to address staffing. The current inspection frequency, while it has improved over the last several months, is still inadequate to ensure that sites are remaining in compliance. In addition, the current workload being conducted by County staff does not appear to be sustainable in the long term. Additional actions will be required to ensure the County can fulfill and maintain the expectations of their delegated authority.

DEMLR staff recommend to continue delegation with review for an additional 6 months with a follow up report to be presented during the 2024 Q3 meeting. During this continued review period, the County would need to continue to work to address the current staffing level and ensure that the program is adequately staffed to provide sufficient resources for plan review and compliance inspections. The County will also need to make those final process changes to ensure that plan review decisions are being sent properly and within the appropriate timeframes.

This report has been prepared based on the initial review conducted on March 14, 2023, the continued review period, and the formal follow up review conducted on January 29, 2024. This report will be presented to the Sedimentation Control Commission during the 2024 Q1 meeting on February 21, 2024.