



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

**MEMORANDUM**

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable Brent Jackson, Chairman  
The Honorable Ruth Samuelson, Co-Chairman  
The Honorable Mike Hager, Co-Chairman

JOINT LEGISLATIVE COMMISSION ON ENERGY POLICY  
The Honorable Bob Rucho, Co-Chairman  
The Honorable Mike Hager, Co-Chairman

SENATE APPROPRIATIONS SUBCOMMITTEE ON NATURAL AND ECONOMIC  
RESOURCES  
The Honorable Andrew C. Brock, Co-Chairman  
The Honorable Brent Jackson, Co-Chairman

HOUSE APPROPRIATIONS SUBCOMMITTEE ON NATURAL AND ECONOMIC  
RESOURCES  
The Honorable Tom Murry, Chairman  
The Honorable Roger West, Chairman  
The Honorable Jimmy Dixon, Vice-Chairman  
The Honorable Garland E. Pierce, Vice-Chairman  
The Honorable Michele D. Presnell, Vice-Chairwoman

FISCAL RESEARCH DIVISION  
Mark Trogon, Director

FROM: Jim Womack  
Chairman of the North Carolina Mining and Energy Commission

*Ray Covington* VICE-CHAIR MEC FOR

SUBJECT: Coordinated Permitting Study Group Report

DATE: February 28, 2014

Pursuant to Session Law 2013-365 Section 2(a), the North Carolina Mining and Energy Commission, with the assistance of the Department of Environment and Natural Resources, shall study 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, but not limited to,

regulation of the following matters: well construction, siting, and closure requirements; hydraulic fracturing treatments, including subsurface injection of fluids for that purpose; water quality, including stormwater control, and management of water resources; management of waste; and regulation of air emissions. Please consider submission of the attached report as the Commission's fulfillment of requirements under respective session law.

If you have any questions or need additional information, please contact me by phone at (919) 770-4783 or via e-mail at [commissioner.womack@gmail.com](mailto:commissioner.womack@gmail.com).

cc: Mitch Gillespie, Assistant Secretary for Environment  
Neal Robbins Director of Legislative Affairs  
Carr McLamb, Deputy Director of Legislative Affairs  
Fred F. Steen, Office of the Governor  
Jennifer Hoffman, Fiscal Research Division  
Tracy Davis, Director, Division of Energy, Mineral, and Land Resources

# North Carolina Mining and Energy Commission

## Coordinated Permitting Study Group Report

February 28, 2014

In April 2013, Mining and Energy Commission (MEC) Chairman James Womack established the "Coordinated Permitting Study Group" (Study Group) and identified MEC Commissioner Kenneth Taylor as the Study Group Director. This action was in anticipation of the N.C. General Assembly mandate to the MEC for a study of 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.

From May to December of 2013, the Study Group met a total of nine times [dates: May 2<sup>nd</sup>, June 6<sup>th</sup>, June 27<sup>th</sup>, July 26<sup>th</sup>, September 6<sup>th</sup>, September 27<sup>th</sup>, October 25<sup>th</sup>, November 22<sup>nd</sup>, and December 6<sup>th</sup>] to identify a path to a coordinated permitting process. This report documents the principal conclusion of the Study Group: **the path to implement a coordinated permitting process for oil and gas has been identified with the N.C. Department of Environment and Natural Resources' (NC DENR) Division of Energy, Mineral, and Land Resources as the coordinating agency.**

At the first Study Group meeting (May 2<sup>nd</sup>), the group examined the permitting process used in the North Carolina Mining Act as a model for how coordinated permitting of oil and gas could be accomplished. Division of Energy, Mineral, and Land Resources (DEMLR) Director Tracy Davis gave an invited presentation on how a coordinated permitting process is already working in the state. As examples, he showed the application checklist, and permit application routing to other entities (i.e. DWR, DWM, U.S. Fish and Wildlife, Cultural Resources, etc.) for approval (where needed) and for requesting recommendations from the reviewing agencies to the mining program which would become incorporated into permit conditions in the approved application.

The Minutes for the May 2, 2013 meeting of the Study Group summarizes Director Davis' presentation. Meeting agendas, minutes, and presentations for the Study Group can be found on the NCDENR web portal at:

<http://portal.ncdenr.org/web/mining-and-energy-commission/permittingstudygroup11-22-13>

During later discussions, the Study Group noted that the Mining Act has several statutory provisions which are not found in the existing Oil and Gas Conservation Act. The Study Group discussed several proposed statutory changes to the Oil and Gas Conservation Act which would strengthen the rulemaking associated with a coordinated permitting process. These suggested changes include:

- (a) Statutory language listing the agencies that would review an oil and gas permit application;
- (b) Oil and gas permit denial criteria;
- (c) The required permit application content;
- (d) Timeline for permit review;
- (e) Public notification prior to the issuance of a permit.

All of these proposed changes have already been forwarded to the Department for consideration in their legislative requests for the short session of the General Assembly.

In order for the Study Group to better understand how the permitting process is conducted in other states, two summer interns, both unpaid – Ms. Colleen Brophy and Mr. Franklin Wolfe went to the official websites of eight states to obtain the raw data for a comparison. The oil and gas permit application, instructions, bonding paperwork, and additional permits for eight states – Wyoming (WY), Arkansas (AR), Colorado (CO), North Dakota (ND), Ohio (OH), Pennsylvania (PA), Texas (TX), and West Virginia (WV) were compiled. Mr. Ryan Channell from the DEMLR Energy Program also provided two complete application packages from Ohio.

At the June 27<sup>th</sup> Study Group meeting, the Study Group Director presented a state-by-state comparison and showed the Study Group the single paper copy (double-sided when possible) of over 2,000 pages of information which was collected. Each member of the Study Group and every member of the MEC were provided with a compact disc (CD) of this material.

That CD contained 231 megabytes (231 MB) of material in eight directories (one for each state). For each state, the following material was compiled: WY (35 files), AR (64 files), CO (56 files), ND (48 files), OH (41 files), PA (71 files), TX (162 files), and WV (41 files). Included in the Ohio material were two complete application packages for two wells. These documents also included the completion reports and simulation (hydraulic fracturing) reports. The Minutes for the June 27, 2013 Study Group meeting includes the discussion of the state-by-state comparison.

Both the MEC Administration of Oil and Gas Committee and the Local Government Regulations Study Group were also briefed on this material. In addition, all MEC staff members received CDs of this information to use in draft rule writing.

On August 26, 2013, NC DENR Assistant Secretary Mitch Gillespie chaired a Coordinated Permitting Meeting with the Directors of Water Resources (DWR), Air Quality (DAQ), Waste Management (DWM), Energy, Mineral, and Land Resources (DEMLR), and the Study Group Director. In that meeting, eight caveats to a coordinated permitting process were identified by the division directors:

- (a) Coordinated permitting would be implemented to address well construction and completion only;
- (b) Once a well is put into production, separate environmental permits from other Divisions may be required;
- (c) Waste management is part of the permitting process and would encourage water reuse;
- (d) The N.C. Department of Transportation (NCDOT) expects that the oil and gas industry will inform NCDOT of plans for high-volume truck traffic;
- (e) The coordinated permitting process would be applied to comprehensive environmental permitting, not to road use or other types of permitting;
- (f) Air quality permitting should not be required, but DAQ maintains an interest in the permitting process;
- (g) If an operator is not doing on-site disposal, the operator is considered as being a waste generator. Burial of drill cuttings on site would require characterization of the material before burial occurs. Industry typically uses off-site disposal options (i.e. landfill);
- (h) Additional permitting may be needed for off-site waste disposal that would be separate from a DEMLR oil and gas drilling permit.

At their September 6<sup>th</sup> meeting, the Study Group was briefed on the outcome from this meeting.

A "White Board" exercise was also conducted at the same Study Group meeting. Each study group member was provided a pad of adhesive "Post-it" notes and asked to post their issues, ideas, and information concerning coordinated permitting on the "white board". This exercise captured 72 items which would need to be considered as part of the coordinated permitting process. At the next study group meeting, September 27<sup>th</sup>, each study group member was asked to further explain and expand those issues they brought to the table. The minutes from those two meetings captured the study group discussion on those issues. Most of these Study Group comments have already been or plan to be incorporated in the draft rule sets.

Three times the Coordinated Permitting Study Group Director was tasked to assist one or more of the MEC Committees or Study Groups with analysis from the compiled oil and gas information. The Local Government Regulation Study Group asked for an explanation of the drilling unit layout used in other states. Downloading from the official websites for those states, the study group director was able to show how multiple wells can efficiently drain a large area from a single well pad.

The Funding Levels & Potential Funding Sources Study Group asked for an estimate of the volume water and sand as well as the number of trucks which would be needed to complete the hydraulic fracturing of a well. Actual examples from both Ohio and Arkansas were used to calculate the impact and these figures were included in the proposal for an impact fee by that study group. Later, the same study group needed to document the potential level of revenue through severance taxes to support the oil and gas regulatory program. For this request, the actual number of wells drilled in the Arkansas Fayetteville Shale per year and the production from those wells was compared to an equal sized area in North Carolina. Three scenarios (high, medium and low) production were modeled. These analyses demonstrated the proposed severance tax rate would be adequate for the program's support and were attached to the Funding Levels & Potential Funding Sources Study Group Report.

Early in the Coordinated Permitting Study Group's discussions, two outliers to the concept of a single coordinated permitting were identified. Both of these were within DEMLR and both were issues which needed to be addressed in coordination with the Environmental Management Commission (EMC) and the Sediment Control Commission (SCC).

The General Assembly tasked the EMC to write rules to coordinate their authority with that of the MEC. The existing state stormwater program does not have rules exclusively for oil and gas operations. In order to establish new rules for the industry, the DEMLR Stormwater Management Program has developed a stormwater rule exclusively for oil and gas for consideration by the EMC. The new rule would allow personnel in the same lead division (DEMLR) to establish stormwater permit conditions for oil and gas. The MEC was briefed at their January 14, 2014 meeting on the progress in rule development for all new and revised EMC rules associated with oil and gas by Mr. Evan Kane, staff member to the EMC.

The other outlier was the review and approval of erosion and sedimentation control plans for land-disturbing activities related to oil and gas exploration and development. During the Special Teleconference Business Meeting on January 28, 2014, the North Carolina Sedimentation Control Commission (SCC) conducted a discussion and approval of the concept for the SCC to request the NC DENR Secretary to assign administration of the Sedimentation Pollution Control Act (SPCA) to DEMLR's Energy Section with regard to oil and gas exploration and development land-disturbing activities.



DEMLR proposed a two-part process for the Sediment Control Commission (SCC) to undertake: (1) amend the Memorandums of Agreement (MOAs) with existing local programs in areas with oil and gas potential to return jurisdiction to the SCC 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 Sedimentation Pollution Control Act (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 SCC would ask of the Energy Section related to implementation of the SCC's regulatory program.

The SCC voted in favor of the DEMLR concept.

### **Membership of the Coordinated Permitting Study Group**

#### MEC Commissioners

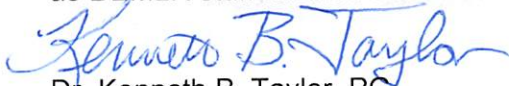
MEC Chairman James Womack;  
Chairs of the three substantive MEC rule development committees;  
Administration of Oil and Gas -- Mr. Charles Holbrook,  
Environmental Standards -- Mr. George Howard,  
Water and Waste Management -- Dr. Vikram Rao;  
Compulsory Pooling Study Group Director -- Dr. Ray Covington;  
Coordinated Permitting Study Group Director -- Dr. Kenneth Taylor

#### Representatives from NC DENR and NC DOT

Mr. Tracy Davis, PE, CPM, Director, Division of Energy, Mineral, and Land Resources (DEMLR)  
Mr. Toby Vinson, PE, Chief Engineer, Land Quality Section, DEMLR  
Mr. Ken Pickle, Stormwater Management Program, Division of Water Quality (DWQ), later DEMLR  
Mr. Don Rayno, Division of Water Resources (DWR)  
Ms. Ellen Lorscheider, Division of Waste Management (DWM)  
Mr. Evan Kane, PG, Groundwater Planning, DWQ, later DWR  
Mr. Mike Abraczinskas, EIT, CPM, Deputy Director, Division of Air Quality (DAQ)  
Mr. William Willets, PE, Engineering Supervisor, Permitting Section, DAQ  
Mr. Brandon Jones, NC Department of Transportation (NCDOT)  
Ms. Emily McGraw, NCDOT

Mr. E.O. Ferrell, MEC Commissioner joined the Study Group for the last two meetings to assist in his orientation to the MEC as the representative from the Environmental Management Commission (EMC).

The Study Group Director appreciates and thanks all the members of the Study Group as well as DEMLR staff for their assistance in this Study Group Report.



Dr. Kenneth B. Taylor, PG  
State Geologist of North Carolina  
N. C. Mining and Energy Commission Member

February 28, 2014

# Spatial Analysis of the Location of the Jurisdictions with Local Erosion and Sediment Control Ordinances

**Table of the 53 Local Erosion and Sediment Control Jurisdictions**

Town of <b>Apex</b> (Wake County)	<b>Jackson County</b>
City of <b>Archdale</b> (Randolph County)	City of <b>Jacksonville</b> (Onslow County)
City of <b>Asheville</b> (Buncombe County)	<b>Johnston County</b>
<b>Avery County</b>	Town of <b>Kill Devil Hills</b> (Dare County)
Town of <b>Beech Mountain</b> (Watauga County)	Town of <b>Kitty Hawk</b> (Dare County)
Town of <b>Boone</b> (Watauga County)	Town of <b>Lake Lure</b> (Rutherford County)
<b>Buncombe County</b>	<b>Lincoln County</b>
Town of <b>Burlington</b> (Alamance County)	<b>Macon County</b>
Town of <b>Cary</b> (Wake, Durham Counties)	<b>Mecklenburg County</b>
<b>Catawba County</b>	City of <b>Monroe</b> (Union County)
Town of <b>Chapel Hill</b> (Orange County)	Town of <b>Nags Head</b> (Dare County)
City of <b>Charlotte</b> (Mecklenburg County)	<b>New Hanover County</b>
<b>Chatham County</b>	City of <b>Newton</b> (Catawba County)
Town of <b>Columbus</b> (Polk County)	<b>Orange County</b>
<b>Durham City/County</b>	<b>Pitt County</b>
<b>Gaston County</b>	City of <b>Raleigh</b> (Wake County)
<b>Grandfather Village</b> (Avery County)	City of <b>Rocky Mount</b> (Nash, Edgecombe Counties)
City of <b>Greensboro</b> (Forsyth County)	<b>Rowan County</b>
City of <b>Greenville</b> (Pitt County)	Town of <b>Southern Pines</b> (Moore County)
<b>Guilford County</b>	<b>Swain County</b>
<b>Haywood County</b>	<b>Wake County</b>
City of <b>Henderson</b> (Vance County)	Town of <b>Wake Forest</b> (Wake County)
<b>Henderson County</b>	<b>Watauga County</b>
Town of <b>Highlands</b> (Macon County)	Village of <b>Whispering Pines</b> (Moore County)
City of <b>High Point</b> (Guilford, Davidson Counties)	City of <b>Wilson</b> (Wilson County)
Town of <b>Holly Springs</b> (Wake County)	<b>Winston-Salem/Forsyth County</b>
<b>Iredell County</b>	

An analysis has been made of the location of each of the Local Erosion and Sediment Control Programs in relationship to the areas which have been identified for potential of containing petroleum and/or natural gas.

The Deep River Mesozoic basin which includes the Ellerbe basin is underneath all or parts of eleven counties: Granville, Wake, Durham, Orange, Chatham, Lee, Moore, Montgomery, Richmond, Anson and Union. The Cumnock Formation in the Deep River has been shown to contain natural gas and natural gas condensates.

The Dan River Mesozoic basin is underneath parts of Rockingham and Stokes Counties. The Davie Basin is considered part of the Dan River basin and is under parts of Yadkin and Davie Counties. The organic-rich shale named the Cows Branch has been tested and the sample analyses show the rocks contain above the minimum organic content of total organic carbon and have the thermal maturity to produce natural gas.

The U.S. Geological Survey (USGS) has proposed a possible buried Mesozoic basin named the Marlboro – Cumberland basin. Work has not been done to confirm if this

proposed basin is composed of Mesozoic age sediments. The proposed basin underlies all or parts of seven counties: Scotland, Robeson, Hoke, Cumberland, Sampson, Johnston, and Wayne.

The USGS has also undertaken an assessment of the older pre-Cambrian rift basin which is found along the western mountains. In a cooperative project with the USGS, the N.C. Geological Survey will next state fiscal year begin collecting rock samples to document the total organic carbon in the rock formations which make up the pre-Cambrian rift basin. All or parts of seven counties are within the organic rock formations in the rift basin: Cherokee, Clay, Graham, Swain, Macon, Jackson, and Haywood.

### **Program by Program Determination**

<u>County Wide Programs</u>	<u>Municipal Programs</u>	
Wake County (YES)	Apex (YES) Cary (YES) Holly Springs (YES) Raleigh (YES) Wake Forest (NO)	
	Archdale (NO)	[Randolph County (NO)]
Buncombe County (NO)	Asheville (NO)	
Avery County (NO)	Grandfather Village (NO)	
Watauga County (NO)	Beech Mountain (NO) Boone (NO)	
	Burlington (NO)	[(Alamance County (NO))]
Catawba County (NO)	Newton (NO)	
Orange County (YES)	Chapel Hill (YES)	
Mecklenburg County (NO)	Charlotte (NO)	
Chatham County (YES)		
	Columbus (NO)	[Polk County (NO)]
Durham City/County (YES)		
Gaston County (NO)		
Guilford County (NO)	Greensboro (NO)	



	High Point (NO)	
Haywood County (YES)		
	Henderson (NO)	[Vance County (NO)]
Henderson County (NO)		
Macon County (YES)	Highlands (NO)	
Iredell County (NO)		
Jackson County (YES)		
	Jacksonville (CP)	[Onslow County (CP)]
Johnston County (YES)		
	Kill Devil Hills (CP)	[Dare County (CP)]
	Kitty Hawk (CP)	[Dare County (CP)]
	Nags Head (CP)	[Dare County (CP)]
Lincoln County (NO)		
	Lake Lure (NO)	[Rutherford (NO)]
	Monroe (NO)	[Union (YES)]
New Hanover County (CP)		
Pitt County (CP)	Greenville (CP)	
	Rocky Mount (NO)	Nash/Edgecombe (NO)
Rowan County (NO)		
	Southern Pines (NO?)	Moore County (YES)
	Whispering Pines (NO?)	Moore County (YES)
Swain County (YES)		
	Wilson (CP)	Wilson County (CP)
Winston Salem / Forsyth (NO)		

The notation of (CP) indicates a program in the Coastal Plain province. From 1925 to 1974, one hundred twenty (120) oil and gas (O/G) exploration wells were drilled in the Coastal Plain. From 1976 to 1998, eight (8) oil and gas (O/G) exploration wells were drilled in Lee County.

Wilson County: One oil and gas (O/G) exploration well was drilled to a depth of 258 feet and completed on October 1, 1969.

Pitt County: No O/G wells drilled in the county, but there is the possibility of other buried Mesozoic basins being discovered in the future.

New Hanover County: Three O/G wells have been drilled in the county (9-11-66, 8-8-69, and 8/19/69).

Dare County: Fifteen (15) O/G wells have been drilled in the county (7-15-46 to a depth of 10,044 feet, 3-12-47, 7-11-65, 8-1-65, 11-5-65, 12-1-65, 11-16-69, 12-8-69, 9-23-71, 10-7-71, 8-25-73, 8-25-73, 10-7-73, 4-4-74, 4-27-74).

Onslow County: Twenty-two (22) O/G wells have been drilled in the county (8-5-50, 11-10-50, 2-18-53, 5-16-59, 5-27-59, 6-6-60, 6-15-60, 4-20-66, 5-14-66, 8-7-66, 8-25-66, 1-9-67, 1-28-67, 2-6-67, 9-7-67, 11-9-69, 11-14-69, 11-19-69, 2-10-70, 2-20-70, 3-10-70, 6-30-70).

Sources of reference for this analysis:

The rock formations published in the Geologic Map of North Carolina (1985), (1:500,000-scale) were used to determine the geology under the counties. The 1985 map was printed from 1:250,000-scale separates which were digitized to create the digital geologic map layer in NC One Map.

For the pre-Cambrian rift basin, seven (7) meta-sedimentary formations were selected: Anakeesta Formation; Boyd Gap Formation; Copper Hill Formation; Nantahala Formation & Tusquitee Quartzite, Undivided; Phyllite; Slate of Copper Hill Formation, and Wehuttu Formation.

For the Mesozoic basins, all rocks of the Triassic Period were combined into one color.

There are several special notes on the determinations made in this analysis.

The Village of Southern Pines is shown on the 1:62,500-scale Geologic Map of Moore County (Plate 1) of Bulletin 76, Geology and mineral resources of Moore County, North Carolina by James F. Conley (1962). The extra territorial jurisdiction (ETJ) for the Village may have grown into the Deep River basin, but that cannot be confirmed. Likewise, the Village of Whispering Pines as best determined is outside the basin, but if future growth to the north and west, the Village will also be within the basin.

The ETJ for the City of Raleigh extends along US 70 to past I-540. The Deep River basin border fault (Jonesboro Fault) is east of the I-540 and US 70 intersections, so Raleigh is in the basin.

The City of Monroe is outside the Deep River basin, but there is a small portion of the basin underlying the easternmost part of Union County. That is why Monroe is marked (NO) and Union County is designated (YES).

Dr. Kenneth B. Traylor, P.G.  
State Geologist of North Carolina

March 11, 2014

# 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.

[This space left intentionally blank.]

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

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 upgrade 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



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

1612 Mail Service Center, Raleigh, North Carolina 27699-1612 • Telephone 919-707-9220 / FAX: 919-733-2876

512 North Salisbury Street, Raleigh, North Carolina 27604 • Internet: <http://portal.ncdenr.org/web/lr/land-quality>

An Equal Opportunity \ Affirmative Action Employer – 30% Post Consumer Paper