

ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Interim Director



NORTH CAROLINA
Environmental Quality

June 14, 2019

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

7016 2140 0000 4368 0383

New Hanover County
Engineering Department
Attention: Mr. James P. Iannucci, PE, CFM, County Engineer
230 Government Center Drive
Suite 160
Wilmington, NC 28403

Dear Mr. Iannucci,

On April 25, 2019, our office conducted a review of the County's erosion and sedimentation control program. We understand you to have two staff members that contribute to this program. A presentation was made to the state Sedimentation Control Commission on the findings and recommendations from our review. While staff have demonstrated a knowledge of erosion and sediment control, and appear to be keeping pace with the workload, Commission members have expressed concern with a memorandum distributed by you and dated January 1, 2018 ("Memo") affecting program administration. This memorandum was discovered upon our review. The Division of Energy, Mineral, and Land Resources along with the Commission request your response to the following questions:

1. There is a concern with the frequency of inspections stated in the Memo. The Memorandum of Agreement ("MOA") between New Hanover County and the NC Sedimentation Control Commission states that the County agrees to periodically and regularly inspect sites with sufficient frequency to effectively monitor compliance with the Sedimentation Pollution Control Act of 1973 ("Sediment Act") and with your local erosion and sediment control ordinance. Per Title 15A NCAC 04B.0131, inspections are to be performed during or after each phase of grading and each phase of a plan. This seeks to ensure that the approved erosion and sedimentation control plan is being followed. Please explain how the criteria for the 90-day inspection frequency was determined.
2. Notices should be given for violations of the Sediment Act in addition to any stop work orders deemed necessary under your ordinance. The Notice of Violation (NOV) is the official notice of a violation, and is the first step towards enforcement. State law prohibits penalties to be served without having issued such a notice. The statement in your Memo, "*Notice of Violations will only be issued for violations that cannot be corrected or the responsible party refuses to correct them, and sediment is allowed to travel off-site.*" This is a concern to the Commission, as off-site sedimentation is a direct violation of the Sediment Act and hence, can warrant an immediate NOV. The use of the word "*and*" in your sentence implies additional conditional criteria on the issuance of such notice. For the nearly two-



North Carolina Department of Environmental Quality | Division of Energy, Mineral and Land Resources
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hundred active projects you have across the county, please address why there have been no Notices of Violation or cases referred for enforcement in all of year 2018, and thus far in year 2019.

3. Of the projects that were reviewed, the Commission would like for to you address why there have been no Notices of Violation or stop work orders issued for the commercial development project named "Porters Neck Crossing" when, at the time of the review, there existed two consecutive out-of-compliance inspection reports.
4. Your Memo states that you will be assessing the effectiveness of the changes over the next six months, ending June 30, 2018. Please state your assessment of the effectiveness of the changes as a result of this Memo and any feedback you have received. Please also explain how this Memo is in keeping with the terms of the MOA signed by the County.

Our mission is to allow for development in the state of North Carolina while preventing pollution by sedimentation. We serve the public, the regulated community, and our local governments with delegated authority for administering the provisions of the Sediment Act. While we believe in forging good relationships with those we regulate, we also expect them to uphold the law.

Per Part II.A.3 of the MOA, please provide your responses, and where deficient, take corrective action within 30 days of receipt of this notification.

The Sedimentation Control Commission voted to continue delegation of authority upon continued review of your program for the next three (3) months. A recommendation will be made and a decision on the fate of the program will be rendered at the August 14th meeting.

Should you have any questions, feel free to call me at (919) 707-9215.

Sincerely,



Julie Coco, PE, CPESC
State Sedimentation Program Engineer
NC Department of Environmental Quality
Division of Energy, Mineral and Land Resources

Attachments:

1. Memorandum dated January 1, 2018 from New Hanover County to Engineers, Surveyors, Developers, Builders and Grading Contractors.
2. Memorandum of Agreement between the Sedimentation Control Commission and New Hanover County.

ec: S. Daniel Smith (DEMLR – Central Office)
William Vinson, Jr. (DEMLR – Central Office)
Taylor Young (DEMLR – Central Office)
Dan Sams (DEMLR - Wilmington Regional Office)
Brian Lambe (DEMLR – Wilmington Regional Office)
Beth Wetherill (New Hanover County)