



North Carolina Department of Transportation
Erosion and Sedimentation Control Program
Delegation
2023

Statutory Authorities:

Whereas North Carolina General Statutes (G.S.) Section 113A-54(a) provides that the North Carolina Sedimentation Control Commission (Commission) "shall in cooperation with the Secretary of Transportation and other appropriate State and Federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and Sedimentation control program"; and

Whereas G.S. 113A-54(d) (2) provides that the "Commission shall assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions, and to approve, approve as modified, or disapprove such programs submitted pursuant to G.S. 113A-56 and from time to time review such programs for compliance with regulations issued by the Commission and for adequate enforcement"; and

Whereas G.S. 113A-56(b) provides that 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 control program to be administered by it, if such program has been approved by the Commission as being in conformity with the general State program"; and

Whereas the Commission intends to delegate to the Department of Transportation, Division of Highways (Department of Transportation), the authority to administer an erosion and sediment control program within the Department of Transportation's jurisdiction which consists of the responsibility for preparation, review, and approval prior to construction of erosion and sediment control plans for all land-disturbing activities that will disturb one or more acres on a project and conducted within rights-of-way, easements and reclamation sites or property owned or under the operational control of the Department of Transportation for highway and other construction, maintenance, and land development; and

Whereas the Commission does not intend to delegate to the Department of Transportation the responsibility for external monitoring of the program and any necessary legal actions.

Therefore, in accordance with the statutory requirements of the Sedimentation Pollution Control Act of 1973, G.S. 113A-50, et seq., as may be amended and pursuant to the statutory authority in G.S. 143B-348, as may be amended, the Department of Transportation submits the following sediment and erosion control program to the Commission for approval and delegation.

General Conditions of Program

- A. The Department of Transportation's Standard Specifications for Roads and Structures and Roadway Standard Drawings as may be amended, shall provide the basic erosion and sedimentation control requirements to be implemented by the Department of Transportation.
- B. The Department of Transportation will prepare, or have prepared, erosion and sediment control plan consistent with Commission standards governing all land disturbing activity it undertakes that will disturb one or more acres of erodible surface on a project.
- C. Consistent with its plan requirements, the Department of Transportation shall provide adequate rights of way or easements to accommodate installation and maintenance of appropriate sediment and erosion control measures.
- D. The Department of Transportation will take all reasonable measures to protect all public and private property from siltation damage caused by any Departmental activity consistent with its policies and procedures developed pursuant to its statutory authorities and responsibilities. In the event damage does occur, satisfactory restoration of property shall be made.
- E. The Department of Transportation will utilize designs and design criteria for application of its erosion and sediment control program that are consistent with minimum standards promulgated by the Sedimentation Control Commission.
- F. The Department of Transportation will develop appropriate training manuals, courses, etc., that will provide sufficient technical administrative guidance to its employees or agents such that the objectives of the program are fulfilled.
- G. The Department of Transportation will be allowed to utilize its delegated authority on any project that the Department maintains. Operational Control throughout the entirety of the land disturbing activity. Operational Control is defined as any project that is administered by the Department of Transportation and is under the authority of the Secretary of Transportation of the Department of Transportation. Land disturbing projects that are funded by the Department of Transportation, but the Department does not retain Operational Control of the project will not be covered by the delegated authority outlined in this agreement.

H. Basic Objectives of Program

Erosion and sedimentation control plans prepared by and for the Department of Transportation will address 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 areas 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 to prevent off-site sedimentation damage.
6. **Manage Stormwater Runoff** – Plans will be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge. ~~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 to control accelerated erosion of the site and increased sedimentation of watercourse.~~

- I. The Department of Transportation acknowledges its obligation to implement its program consistent with the standards for land-disturbing activities promulgated by the Sedimentation Control Commission. Please refer to the DEQ, Division of Energy, Mineral and Land Resources web page to view the referenced and incorporated herein by reference [Sedimentation Pollution Control Act of 1973](#), as amended, and the administrative rules codified at Title 15A of the NC Administrative Code, Chapter 4, 15A NCAC, 4(a), et seq., as amended. ~~In urgent conditions involving public safety, flexibility in the application of Sedimentation Control Commission standards may be required and, in those situations, the Department of Transportation and the Commission and their authorized representatives will cooperate in the best public interest.~~

Commented [GJA1]: These are all codified in 15A NCAC 04B .0106 with slightly different language. #6 is not clear as to what the intent is. I replaced it with the language from the Admin Code. Julie may want to update all of them with that language as well. All of the language is below:

15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES An erosion and sedimentation control plan developed pursuant to this Chapter shall be designed to address the following: (1) Identify Critical Areas. Identify site areas subject to accelerated erosion, and off-site areas vulnerable to damage from erosion and sedimentation. (2) Limit Exposed Areas. Limit the size of the area exposed at any one time. (3) Limit Time of Exposure. Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority. (4) Control Surface Water. Control surface water originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure. (5) Control Sedimentation. All land-disturbing activity shall be planned to prevent off-site sedimentation damage. (6) Manage Stormwater Runoff. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

Commented [HDB2R1]: Should it just state that "Plans will be designed to be compliant with 15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES"

Commented [JC3R1]: These rules were updated in 2020. You should be OK addressing the new rules either way.

Commented [JC4]: Is this in reference exclusively to G.S. 113A-52.01(4) and G.S. 116A-19.30(a)(5)?

Specific Conditions of Program

A. Borrow Sources:

The administration of borrow sources obtained by the Department of Transportation or its agents will be in accordance with the requirements of the North Carolina Mining Act of 1971.

B. Waste Areas:

Waste areas furnished as a part of the Department of Transportation's construction activities will have erosion and sediment control planning and measures addressed as part of the stabilization and maintenance plans developed under the contract requirements.

C. Erosion and Sediment Control Plan Design:

Erosion and sediment control plans prepared by agents for the Department of Transportation will be prepared consistent with the Department of Transportation's program requirements and the Department of Transportation will review such plans to assure compliance before acceptance of them. [When projects involve clearing and grubbing operations then a clearing and grubbing phase erosion control plan will be developed as well as a final grading phase erosion control plan.](#)

D. Erosion and Sediment Control Plan Review:

Roadside Environmental Unit erosion and sediment control plans and waste areas stabilization and maintenance plans prepared in the field divisions will be prepared consistent with the Commission's standards and with the objectives of this program. Routine review by the staff of the Roadside Environmental Unit will be made to assure that program objectives and requirements are satisfied. Approximately 25% of the plans will be reviewed on a quarterly basis to assure compliance with the program delegation.

E. Modifications to Erosion Control Plans:

The following devices will require consultation with the Roadside Environmental Unit prior to being modified or altered on a project.

- 1) Riser Basin
- 2) Skimmer Basin
- 3) Temporary Rock Sediment Dam, Type A
- 4) Temporary Rock Sediment Dam, Type B (Located at Stream Crossings and stormwater discharge outlets)
- 5) Temporary Rock Silt Check, Type A (Located at Stream Crossings and stormwater discharge outlets)

- 6) Culvert Construction Sequence
- 7) Channel Changes
- 8) Construction operations that warrants changes to the erosion control plan

F. The Department of Transportation will furnish, if requested by the Commission or its authorized staff, a copy of any erosion control plans prepared under this program. The Commission and NCDEQ agrees to waive any fee charges, etc., associated with the review of these plans and of the Department of Transportation's program.

Commented [JC5]: New

Commented [JC6]: I don't know that we need the extent of notifications to LQS personnel that we had in the previous MOA, but I think it still prudent to at least notify our Regional Engineers when construction on a project involving significant land-disturbances in their region has begun.

Commented [HB7R6]: Julie, We find that there are Regional Offices that call if they have any questions and others are silent. Some may want to know and others have confidence if they have a problem then they call us. Check with your Regional Engineers and find out what they want. We do not want to overload their plate with more stuff if there is a better way.

Program Monitoring and Enforcement Procedure

The Department of Transportation places responsibility for the monitoring and enforcement of its erosion and sediment control program through a system outlined below.

Contract Construction – State Transportation Improvement Program (STIP)

Contract Construction projects utilize erosion and sediment control plans as part of the construction plans when the project is let to contract. The Resident Engineer or Engineer responsible for the project is responsible for ensuring that the contractor constructs the project in accordance with contract requirements and [plan details/specifications](#)the latest version of the NCDOT Standard Specifications for Roads and Bridges. The NCDOT holds pre-construction conferences with their contractors for these projects in accordance with Section 108 of these specifications. Project personnel manage the project to assist the Resident Engineer with this responsibility. The project staff along with the contractor's staff are the first line effort of maintaining correct and proper erosion and sediment control implementation. The Engineer reports directly to the Division Construction Engineer who is responsible for all contract construction projects within a Division. Both positions answer directly to the Division Engineer who reports to the Chief Engineer. The implementation of effective erosion and sediment control on projects is a major responsibility of these two positions (Resident Engineer and Division Construction Engineer) and they are accountable to the Division Engineer and the Chief Engineer.

In addition, there are two separate functional areas that are not within the Divisions' chain of authority but rather report to a separate Central Unit responsible to the Chief Engineer and who have major responsibilities associated with the erosion and sedimentation control efforts on projects.

The Roadside Environmental Unit's Field Operations Engineer (F.O.E.) is charged with the direct responsibility to monitor land disturbing activities on projects for compliance with the Department's Erosion and Sediment Control Program requirements. The FOE brings

management's attention to problem areas, attitudes, unique situations, etc., that prohibit proper and effective erosion and sediment control efforts. This position issues a report resulting from its monitoring and evaluation of contract construction project review and has the authority to issue an Immediate Corrective Action (ICA) and monitor follow up efforts on the part of Division Personnel. Placing a project in the Immediate Corrective Action (ICA) status triggers a series of actions that are designed to bring the project back into compliance as soon as practicable. Although the Roadside Environmental Field Operations Engineer is not designated with the authority to immediately suspend all operations on a project for failure to maintain satisfactory erosion and sediment control, this position can cause the same result by direct and immediate communication with the Resident Engineer or Division management staff. If for some reason a proper response is not received from the Resident Engineer or Division Engineer, then direct and immediate contact will be made with the appropriate Area Construction Engineer who is vested with the authority to suspend operations on a project for any reason deemed appropriate in their judgement. The Area Construction Engineer is an expert in construction assigned out of the Central Unit in Raleigh. The position is staffed to the State Construction Engineer who is at the same level as a Division Engineer and who reports to the Chief Engineer in a functional area of responsibility separate and apart from a Division Engineer.

The Area Construction Engineer's main function is to assure contract construction procedures are consistent with the intent of the Department. This position accepts the project from the Contractor on behalf of the Department and has certain approval authorities in contract administration matters not delegated to the Divisions. This position operates under the authority of the Chief Engineer in Construction matters and is assigned special investigative and troubleshooting roles as appropriate.

Both the Area Construction Engineer and the Field Operations Engineer as well as these engineers' subordinances are assigned to the Chief Engineer and do not fall in any way under the supervision and control of the Division Staff. Both sets of positions have been vested with certain responsibilities and authorities associated with implementing an effective Erosion and Sediment Control Program and constantly review project activities to assure the program is working as intended.

Division Construction/Maintenance Projects

Division Construction/Maintenance Projects are construction projects usually less complex in nature and type and in general would have less risk of sedimentation damage to adjacent properties and are directly administered from the Divisions. Erosion and Sediment Control plans for Division Construction/Maintenance Activities are designed to comply with current standards and practices compliant with the Standard Specifications for Roads and Structures and Roadway Standard Drawings.

The Division Engineer is responsible for either letting these smaller projects to contract through the purchase order process or constructing the project with their own forces and equipment. The Division Engineer has a staff of Project/Construction Engineers,

Bridge Engineers, Highway Maintenance Engineers, and Maintenance Technicians, which assist with these projects.

The Roadside Environmental Unit's Field Operations Engineer (FOE) also reviews and monitors these Division construction/maintenance projects and have certain authorities delegated by the Chief Engineer to maintain compliance with the Department's Erosion and Sediment Control Program responsibilities. The FOE is delegated the authority to suspend grading activities on these types of projects subject to appropriate remedial actions being taken to bring the project into compliance. If a FOE does not get a proper response from the project staff, they will make immediate contact with Division Engineer and advise them of the situation on the project that if Immediate Corrective Actions are not undertaken, they will suspend the land disturbing activities of the project subject to proper actions being taken. If no action is taken within a reasonable time depending upon the severity of the situation, they will issue a written directive to the Division Engineer advising that the land disturbing activities on the project are being suspended under the authority of the Chief Engineer until further notice. He will immediately advise the State Roadside Environmental Engineer of their action who in turn will advise the Chief Engineer. The decision as to when activities will resume will be made in the office of the Chief Engineer.

This would be a unique situation as every effort is made to resolve issues at the lowest level and to operate in compliance with the Department's program and objectives.

Immediate Corrective Action Status (ICA)

The Roadside Environmental Unit with the Department of Transportation will be responsible for monitoring and evaluating the Department, and its compliance with the Commission's standards and with the objectives of this program. The Roadside Environmental Unit is responsible for issuance of the following:

- **Immediate Corrective Action (ICA)** – An ICA will be issued when an erosion control inspection reveals that a project is in violation of the Sedimentation pollution Control Act and/or the NPDES permit, and the project is given an overall report grade of 6 (Scale of ~~1-10~~ 10 – Excellent, 9-8 – Good, 7 Fair, 6-1 Poor) or below and the project staff have failed to take corrective actions. Once issued, the ICA status will remain in effect until corrective actions have been satisfactorily implemented. To ensure that compliance with the Sedimentation pollution Control Act and/or NPDES Permit is regained, a follow-up inspection will be conducted in five (5) working days after an ICA is issued. If the follow-up inspection reveals that needed corrective actions have been satisfactorily completed the ICA will be lifted (removed). Circumstances may warrant, however, that an ICA will remain in effect for an extended period after its issuance. This is the case when corrective work is hampered by adverse weather, erosion control materials needed for corrective actions or are unavailable, or corrective items on an ICA have been totally neglected or ignored.

Commented [JC8]: Do we not now need to address ECPARs, PCNs, and CICA-SWOs that have entered the picture since the original delegation agreement was written? These are listed on your monthly report.

Commented [HB9R8]: Julie, We did not include these items since they are either notifications or something that we no longer need.

ECPAR was something created to force communication between the contractor and consultant engineer. It was developed to bring attention to a situation that often is two personalities not getting along. ECPAR may change as we evolve.

PCN - The PCN was created to alert our Div Environmental Engineers that an issue has developed that creates issues with a permit. Sometimes it is sediment related but often it can be other issues. We did not think it warranted to be in the MOA.

NCDOT-SWO was created to help ease concerns when we built I-77 in Mecklenburg County. Since a third party was funding it, Mel Nevills was concerned that Roadside would need something more than an ICA. He even suggested that we ask for enforcement authority from SCC. We chose this Stop Work Order option, but we never had to use it. The normal processes worked. We do not believe this may be needed in the future.

Commented [JC10]: Recommend elaborating on these grades and the scale. It is a bit unclear as to the difference between 6 & 7 or 7 & 8 when evaluating the installation of BMPs, for example.

Commented [HB11R10]: Do you think that additional information explains the grade scale?

- **Immediate Corrective Action Extension (ICA-EX)** - Should the follow-up inspection for an ICA reveal that significant progress has been made towards the completion of needed actions, but not enough corrective work has been accomplished to justify lifting (removing) the ICA, an ICA-EX will be issued. The purpose of an ICA-EX is to grant additional time for completion of the remaining erosion control items. When an ICA EX is issued, a follow-up inspection will be conducted in five (5) working days. If the follow-up inspection reveals that needed corrective actions have been satisfactorily completed the ICA will be lifted (removed). Projects are limited to a maximum of two (2) ICA-EX's.
- **Continuing Immediate Corrective Action (CICA)** - When any follow-up inspection reveals that little or no progress has been made towards the completion of necessary corrective actions or additional corrective actions are now needed to bring the project into compliance a CICA may be issued. The purpose of a CICA is to alert Project, Division and NCDOT management that there has been an inadequate response to an ICA, the project now poses a higher risk for offsite sedimentation damage, and detrimental effects to the environment are imminent. When a CICA is issued, a follow-up inspection will be conducted every five (5) working days until the corrective actions identified as needed in the ICA and/or follow-up inspection report(s) have been satisfactorily completed.

Department Responsibilities for ICA, ICA-Ex, CICA, or CICA-SWO

Once a project is in an ICA, ICA-EX, CICA, or CICA-SWO status, the Engineer responsible for the project will prepare an outlined plan detailing corrective measures that will be instituted and an anticipated completion date. All ICA, ICA-Ex, CICA, and CICA-SWO reports will be sent to Program personnel within the Land Quality Section of DEMLR.

Suspension of Project Activities:

The suspension of work on any active construction project may occur if the responsible engineer deems it necessary to remain in compliance with the Department's Erosion and Sediment Control Program.

If the Roadside Environmental Unit issues an ICA notice and determines that the proper corrective actions are not being taken within a reasonable period, they will immediately contact the Division Engineer. The Division Engineer will be responsible for ensuring proper corrective actions are being implemented. Suspension of work associated with land disturbing activities on the project may occur until such time as appropriate corrective actions have been taken to abate the non-compliant issues.

The Chief Engineer will be notified and will determine if further action is necessary to ensure compliance with the Department's Erosion and Sediment Control Program.

Program Review and Evaluation:

The Commission shall review and evaluate the Department of Transportation's Sedimentation and Erosion Control Program on an annual basis or as deemed necessary by DEMLR.

Existing Uncovered Areas:

The Department of Transportation has implemented and will continue a program that will, subject to the availability of funds, provide corrective treatment to all existing uncovered areas that exceed one acre on a project and are experiencing continued accelerated erosion. The treatment provided will consist of the establishment of groundcover or other protective measures, structures, or devices to control off-site sedimentation. The program places priority on those areas that are contributing to off-site damage.

Commented [JC12]: This provision removed from our Model Ordinance.

Commented [HB13R12]: So we should delete it?

Annual Report to the Sedimentation Control Commission:

The Department of Transportation will present an annual report to the Commission. The report shall include but not be limited to an overview of the program, the number of plans prepared by NCDOT and its agents, project reviews and planned emphasis areas for the next twelve months. This report will be submitted to the Commission when the Department of Transportation's delegated program is reviewed.

Approval:

The North Carolina Sedimentation Control Commission hereby approves the program of erosion and sedimentation control associated with highway construction, maintenance, and specified land development submitted by the North Carolina Department of Transportation as conforming to the general state program as provided for the G.S. 113A-56(b) and except for external monitoring and any necessary legal action delegates the jurisdiction conferred on the Commission by G.S. 113A-56(a) to the Department of Transportation to carry out the approved Erosion and Sedimentation Control Program. The responsibility for the external monitoring of the program and any necessary legal actions is not delegated to the Department of Transportation but is retained by the Commission.

Approved for the Sedimentation Control Commission.

Signature: _____ Date: _____

Chairperson of SCC