

## **Local Program Report to the SCC Mecklenburg County, May 23, 2024**

On March 14, 2024, personnel from NCDEQ, DEMLR conducted a formal review of the Mecklenburg County Erosion and Sedimentation Control Program. The County was last reviewed and presented to the Sedimentation Control Commission (SCC) in September 2019. The County requires an erosion and sediment control plan for projects disturbing 1 acre or greater. The jurisdiction of the program covers all unincorporated areas of the County and within the Towns of Cornelius, Davidson, Matthews, Mint Hill, and Pineville. At the time of our review the County has 6 staff contributing approximately 4 full time equivalents (FTE) to the program. The County filled an erosion control inspector position in February which had been vacant over the past year. During the previous year from March 2023 through February 2024, the County conducted 177 plan reviews or re-reviews, issued 69 plan approvals and 108 disapprovals. During this same period the County conducted 570 inspections, issued 5 NOVs and 6 CPAs. The County can hold the issuance of a Certificate of Occupancy for any building on a project if there are outstanding erosion control issues. At the time of DEMLR's review, the County had 124 open projects. DEMLR staff reviewed four project files and conducted site inspection on three projects. The following is a summary of the projects reviewed.

### **1. Euroline Transportation Warehouse:**

This project consists of 5.73 acres disturbed for industrial development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. The registered agent information for the company listed as the Financially Responsible Party (FRP) was missing from the FRO form. The County received the complete application on 9/22/2022 and conducted 5 review cycles prior to issuing the letter of approval on 9/14/2023. A review cycle starts when a complete submittal package is received and ends when the review comments are sent back to the applicant, or the plan is approved. An official review decision was not always being sent through this process and therefore the review decision timeframes are not always being met. The approved plan appeared adequate from a design standpoint; however, specific maintenance notes for some proposed measures were not included. Construction on this project initially began prior to obtaining an approved plan. The County issued a NOV and CPA to this project on 1/10/2023. Work stopped immediately and the County found that temporary ground cover had been provided on disturbed areas during a follow up inspection conducted the following day on 1/11/2023. The county continued to monitor this project and ensured that the site was stable, and no additional disturbance occurred until the erosion control plan had been approved. The County has conducted 8 inspections since September 2023. On the day of the review, mass grading was underway. Silt fence appeared to be installed correctly with a few sections which needed to be maintained. Diversion ditches throughout the site had been matted. One section of the diversion ditch had been removed for installation of the retaining wall. This section would need to be regraded once the retaining wall is complete or prior to anticipated rain events. The skimmer basin had been installed and appeared to be functioning. Stockpiles had been placed adjacent to the skimmer basin and were

actively being worked. Silt fence needed to be installed around the toe of the piles. Minor tracking onto the road was noted and the construction entrance needed to be refreshed with stone. Vegetation had established along completed perimeter and basin slopes. Overall, this site was out of compliance, needing to maintain the construction entrance and clean sediment tracked onto the road.

## **2. Plantation Estates Ph. 2.**

This project consists of 14.1 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. The registered agent information for the company listed as the FRP was missing from the FRO form. The County received the complete application on 4/1/2021 and conducted 2 review cycles prior to issuing the letter of approval on 7/14/2021. The approved plan appeared adequate from a design standpoint; however, specific maintenance notes for some proposed measures were not included. Construction on this project began in August 2021 and the County had conducted 20 inspections prior to the review. On the day of the review, vertical construction was underway, interior roads and the storm drain system had been installed. Skimmer basins throughout the site needed to be maintained or repaired. Sediment had accumulated in a couple of basins to the point where the basins were no longer functioning as designed. The need to clean out these basins had been noted on previous inspection reports. A few silt fence outlets below the installed retaining wall needed to be maintained with fresh stone. Completed areas below the retaining walls needed to be stabilized. Curb inlet protection measures appeared to be installed and well maintained throughout the site. A few drop inlet protection measures needed to be maintained. No offsite sediment was noted. Following the day of the review, the County issued an NOV to this site with a compliance deadline set for 3/21/2024. The County met with contractor staff and conducted a follow up inspection on 3/22/2024. During the follow up inspection the inlet protection measures had been maintained and the completed areas below the retaining wall had been seeded and mulched with straw. One of the basins had been properly removed and the area stabilized while repairs and maintenance was underway on others. Accumulated sediment still needed to be removed from the forebays of two basins and the contractor stated that they were waiting for the area to dry out more before completing this. The County conducted another follow up inspection on 4/3/2024 and found that the repairs to the remaining basins had been completed and the site was back into compliance.

## **3. Clear Creek Office Warehouse:**

This project consists of 4.41 acres disturbed for commercial development and is located within the Rocky Subbasin of the Yadkin Pee Dee River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, a landowner consent letter, previous inspection reports and the FRO form. The registered agent information for the company listed as the FRP was missing from the FRO form. The County received the complete application on 10/6/2022 and conducted 3 review cycles prior to issuing the letter of approval on 2/3/2023. The approved plan appeared to be adequate from a design standpoint; however, specific maintenance notes for some proposed measures were not included. Construction on this project began in March 2023 and the County had conducted 10 inspections

prior to the review. On the day of the review, construction of the building had been completed and conversion of the temporary basin to the permanent Stormwater Control Measure (SCM) had begun. Permanent vegetation was establishing throughout completed areas at the front of the site. Sod was being installed in the permanent SCM and the adjacent recently graded slopes were being matted. It appeared that the remainder of the site was being fine graded and prepared for permanent stabilization and landscaping. This site was nearing completion and County staff noted that they would not issue the Certificate of Occupancy until the remaining areas were stable, the permanent SCM is completed, and as-built surveys finalized. No offsite sediment was noted. Overall, this site was in compliance.

#### **4. Champion Tire (File Review Only):**

This project consists of 6.14 acres disturbed for commercial development and is located within the Upper Catawba Subbasin of the Catawba River Basin. Construction on this project began prior to obtaining an approved plan. The County issued a NOV and penalty to this project on 11/9/2023. The County conducted a follow up inspection on 11/13/2023 and noted temporary groundcover had been installed and all land disturbing activity had ceased. The County continued to monitor this site to ensure that no additional land disturbance occurred prior to obtaining an approved plan. The County received the complete application for this project on 11/20/2023 and was approved on 12/4/2023. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. The registered agent information for the company listed as the FRP was missing from the FRO form. Construction on this project resumed in mid-December 2023. The County had conducted 4 total inspections including those conducted prior to the project obtaining an approved plan. A field inspection was not conducted for this project during the review.

#### **Positive Findings:**

During the review DEMLR Staff noted positive aspects about the Mecklenburg County Erosion and Sedimentation Control Program including:

- Enhanced Erosion Control requirements are implemented within the Goose and McDowell Creek watershed areas, critical and protected watershed districts, and land within 500 feet of listed 303(d) streams. These requirements include the use of high hazard silt fence with wire backing and stone entrenchment along wetlands, streams, lakes and other water bodies, a more restrictive timeframe for ground stabilization, matting of diversion ditches and interior basin slopes, larger basin design volume requirements and others.
- The County has developed a certification program in conjunction with the City of Charlotte to provide training for construction site self-inspectors and other interested participants. This program is meant to ensure that certified individuals are recognized as having achieved the minimum competency requirements as outlined in the County's Ordinance.
- The County can place a hold on the issuance of a Certificate of Occupancy if there are outstanding ESC issues that need to be addressed.
- The County requires that perimeter and the initial phase ESC measures be installed and approved by the County before mass grading of a project can begin.

- Preconstruction meetings are required for all projects.

**Issues noted and Required Actions:**

During the review DEMLR staff found that the Mecklenburg County Erosion and Sedimentation Control Program had a few deficiencies and will need to implement the following changes:

- The registered agent information was not obtained for all Financially Responsible Parties (FRP) when the FRP is a company or firm.
  - If the FRP is a company or firm the registered agent information must be provided on the FRO form. This applies to both in and out of state companies.
- Sections of the Local Ordinance are outdated or no longer adhere to the General Statutes and NC Administrative Code. The Local Ordinance was last updated in 2008 and will need to be updated in accordance with the most recent General Statute and Administrative Code changes.
  - Staff stated that the Ordinance update process is underway. The Commission has approved the 2022 Model Ordinance, any updates to the Local Ordinance which are substantively different from the Model Ordinance will need to be reviewed and approved by the Commission.
- When a complete package is received, the plans are reviewed, and comments are sent back to the applicant as part of the overall development plan review package. Through this process, an official review decision is not always being sent within the appropriate timeframe.
  - 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 15A NCAC 04B.0118. When plans are found to be inadequate, an official disapproval should be issued. These notices of the disapproval must be sent with the ability to track receipt of the notice by the applicant since the applicant has the right to appeal the disapproval if requested within 15 days of receiving notice of the disapproval.
- Maintenance notes for some proposed measures were missing from approved plans.
  - Specific maintenance notes for each proposed measure should be included within each approved plan.

**Recommendations for improvement:**

DEMLR staff have also noted a few recommendations that would help to improve the program:

- The SCC has developed a Memorandum of Agreement (MOA) between themselves and locally delegated programs. This MOA outlines the responsibilities and expectations of both the Commission and the locally delegated program. This MOA is not a binding legal contract, nor is it a requirement of your delegation. However, it is highly recommended and encouraged that the County enter this MOA with the Commission.

- The County appears to be monitoring for and providing guidance to the contractors when potential NPDES violations are noted while conducting their inspections. Staff should continue this practice and continue to refer potential violations to the NCDEQ Mooresville Regional Office when necessary.

**Conclusion:**

Overall, DEMLR found the Mecklenburg County Locally Delegated Erosion and Sedimentation Control Program to be robust but had a few deficiencies. The County will need to ensure that the registered agent information is included on the FRO form when the FRP is a company or firm. This applies to both in-and out-of-state companies. The County will also need to adjust their plan review process to ensure that the erosion and sediment control plan is reviewed, and notification of the official review decision is sent to the applicant within the appropriate timeframe. Review comments can be sent back to the applicant at any time during the review process but if a plan is not adequate at the end of the respective 30- or 15-day review timeframe, an official notice of plan disapproval should be sent. These notices must be sent with the ability to track when the applicant receives the notice. The County is in the process of updating the local ordinance. The County recently filled an open inspector position in February. The County has developed an inspector certification program and implements “Enhanced Erosion Control Requirements” within critical areas within their jurisdiction. Staff demonstrated a thorough understanding of erosion control design, plan review and noted all areas seen by State Staff during site inspections. The NOV and CPA documents recently issued included all the appropriate language and followed the proper procedures. Staff demonstrated an understanding of how to utilize the enforcement tools available to bring sites into compliance, including their ability to place holds on Certificates of Occupancy. The County demonstrated their ability to effectively implement the Local Program’s delegated authority.

DEMLR staff recommend to “Continue Delegation” of the Mecklenburg County Erosion and Sedimentation Control Program. This report has been prepared based on the formal review of the Mecklenburg County Sedimentation Control Program conducted on March 14, 2024, and will be presented to the Sedimentation Control Commission during its 2024 Q2 meeting on May 23, 2024.