

Local Program Review Recommendation Levels

[Text in red is what has been added from the original document.]

Local Program reviews consist of a one-day visit to the local government. The review focuses on both in-office administration and in the field site inspections. During the in-office portion of the review, DEMLR staff review project files for appropriate documentation and discusses typical practices and procedures of the program administration. During the field portion of the review, DEMLR staff observe program staff while they conduct a typical site inspection. Projects to be reviewed are selected by DEMLR staff on the day of the review. Project selection is made with the goal of selecting a representative sample that varies in project purpose, disturbed acreage, current construction phase and site location. Program reviews are meant to determine the ability of program staff to adequately monitor and enforce the provisions of the Sedimentation Pollution Control Act of 1973 (SPCA). While these levels of recommendation provide guidance as to the expectations of Local Programs, recommendations made by DEMLR staff seek to appropriately reflect the findings of the review but may not necessarily be sequential from one review period to the next.

Level 1 – Continue Delegation: No oversight is needed; overall, the program is successfully implementing their requirements.

Level 2 – Continue Delegation with Review: At this level, the program may need clarification on certain provisions of the SPCA or limited guidance on their ordinance and practices. The program needs clarifications or guidance in one or more areas:

- **Procedures and Records** - This includes the handling of paperwork or submittal requirements for applicants, application review response and notification requirements, on-site records review, or the development of their local ordinance. Staff may need guidance on reporting their program-related activities to the DEQ-DEMLR regularly and accurately with few omissions. The program may not be aware of the latest laws and rules regarding erosion and sedimentation control.
- **Staffing** – The program typically employs a sufficient number of qualified personnel to administer their program requirements expediently and effectively. This is based in part on the size of the jurisdiction or the number of acres the program has to monitor.
- **Plan Reviews** - Program staff demonstrate adequate knowledge of erosion and sedimentation control designs and plan requirements, but may be lacking in some areas. Plan approvals are generally being conditioned upon compliance with state and federal water quality laws or rules, but staff may need assistance with permit coordination. Staff may need reminding that once a complete application is received, plan reviews are to be conducted and a decision sent to the applicant within the time

period specified under Part III.C of their Memorandum of Agreement and General Statute 113A-61 (b).

- **Site Monitoring** – Program staff demonstrate adequate knowledge of plan reading and the ability to determine if erosion control measures are functioning as designed under the approved plan while in the field, but may be lacking in some areas. Staff also demonstrate the ability to detect significant deviations from an approved plan, and the ability to clearly articulate the appropriate corrective actions needed to gain compliance with the SPCA, but may be lacking in some areas. Inspection reports may be missing the minimum information in which to properly evaluate a land disturbing activity. Site inspections may not always be conducted periodically and regularly with sufficient frequency to effectively monitor compliance with the SPCA, its code, or the local ordinance. Self-inspection records may not be frequently available nor properly documented, and staff have not informed the responsible part(ies) of this deficiency. Notices of Violation may be inconsistently or infrequently issued when the Financially Responsible Party has failed to comply with the SPCA, its code, or the local ordinance; such notices shall consist of and be delivered in accordance with General Statute 113A-61.1(c) and its amendments.

Of the above program requirements, few to some adjustments are needed to the program's administration to correct deficiencies or the adjustments needed are minor to moderate in scope. The program is generally adhering to the responsibilities found in their memorandum of agreement, the SPCA or its code, but is in need of clarifications or guidance to fulfill those requirements. The review period is recommended based on the number or scope of adjustments needed.

Examples of program requirements that are not being met or that require clarification or limited guidance beyond the initial review period include:

- Documentation of land ownership is not being obtained prior to approval of a plan and retained in each project file.
- Once a complete application is received, plans are reviewed, but the person submitting the plan is not notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan. An official Notice of Disapproval must be sent within 30 days of receiving the complete application when plans are found to be inadequate.
- Self-inspection records are not being reviewed when onsite, or a review of those records shows them to be incomplete, and the program is not notifying those responsible for the self-inspections of the deficiency.
- Inspection staff are unaware that a second construction entrance with no protection against sedimentation is being used and failed to include it on the inspection report.

The list above is not a comprehensive list of program requirement deficiencies which may be noted during a review. The finding of one or more of the above deficiencies does not necessitate this specific recommendation level nor does the absence of one or more of the above examples guarantee a higher recommendation level.

Periodic oversight and follow-up from our review is needed; DEQ, DEMLR staff will communicate more frequently with the local program on its requirements or may request documentation of program actions to review for adherence to the SPCA. This may include submittals of inspection reports, decision letters, or enforcement documents. The DEMLR may choose to conduct a second in-person review(s) based on recommendations given from the first review.

[Text in green represents changes from the text above to distinguish to a subjective degree between Levels 3 and 4.]

Level 3 – Place on Probation: At this level, the program has little understanding of the SPCA or their ordinance, or may be unwilling to assume responsibility for administration and enforcement of its program. The program needs significant guidance on their ordinance or practices. The program needs significant guidance in one or more areas:

- **Procedures and Records** - This includes the handling of paperwork or submittal requirements for applicants, application review response and notification requirements, on-site records review, or the development of their local ordinance. Staff may need guidance on reporting their program-related activities to the DEQ-DEMLR regularly and accurately with few omissions. The program is not aware of the latest laws and rules regarding erosion and sedimentation control.
- **Staffing** – The program may be employing an insufficient number of qualified personnel to administer their program requirements expediently and effectively. This is based in part on the size of the jurisdiction or the number of acres the program has to monitor.
- **Plan Reviews** - Program staff may be lacking adequate knowledge of erosion and sedimentation control designs and plan requirements. Plan approvals may be infrequently conditioned upon compliance with state and federal water quality laws or rules, and staff may need assistance with permit coordination. Once a complete application is received, plan reviews are infrequently or not at all being conducted and a decision sent to the applicant within the time period specified under Part III.C of their Memorandum of Agreement.
- **Site Monitoring** – Program staff may be lacking adequate knowledge of plan reading and the ability to determine if erosion control measures are functioning as designed under the approved plan while in the field. Staff may also be lacking in the ability to detect significant deviations from an approved plan, and the ability to clearly articulate the appropriate corrective actions needed to gain compliance with the SPCA. Inspection

reports may be missing the minimum information in which to properly evaluate a land disturbing activity. Site inspections may not always be conducted periodically and regularly with sufficient frequency to effectively monitor compliance with the SPCA, its code, or the local ordinance. Self-inspection records may not be frequently available nor properly documented, and staff have not informed the responsible part(ies) of this deficiency. Notices of Violation may be inconsistently, infrequently, or not at all being issued when the Financially Responsible Party has failed to comply with the SPCA, its code, or the local ordinance; such notices shall consist of and be delivered in accordance with General Statute 113A-61.1(c) and its amendments.

Of the above program requirements, many adjustments are needed to the program's administration to correct deficiencies, or the adjustments needed are major in scope. The program is generally not adhering to the responsibilities found in their memorandum of agreement, the SPCA or its code, and is in need of significant guidance to fulfill those requirements. The review period is recommended based on the number or scope of adjustments needed.

Examples of program requirements that are not being met or that require significant guidance beyond the initial review period include:

- Program staff are unresponsive to requests made by auditors as a result of investigations made into their program responsibilities.
- The Program is unable and/or unwilling to administer their delegated authority in an effective manner to ensure adherence to the Local Ordinance, the SPCA and its code.
- Plans are being approved without regard to work requirements within a jurisdictional stream or riparian buffer and/or without including the required timelines for ground cover as necessary to satisfy requirements under their delegation authority.
- Approved plans are missing a construction sequence.
- Plans are not being reviewed and applicants are not being properly notified of the review decision within the required timeframes, as mentioned above.
- Inspections are not being conducted periodically and with sufficient frequency to ensure compliance with the SPCA and its code.
- Violations and their corresponding corrective actions are not being presented to the Financially Responsible Party in the form of inspection reports, or inspection reports do not accurately reflect the conditions and violations found onsite during inspections.
- When violations are not being addressed, or when land is being disturbed without measures or without a plan that would otherwise be required, Notices of Violations are not being sent or there is no follow-up to the notices.

The list above is not a comprehensive list of program requirement deficiencies which may be noted during a review. The finding of one or more of the above deficiencies does not necessitate this specific recommendation level nor does the absence of one or more of the above examples guarantee a higher recommendation level.

Frequent oversight and follow-up from our review is needed; DEMLR staff will communicate more frequently with the local program on its requirements and may request documentation of program actions to review for adherence to the SPCA. Plan reviews or inspections may be required to be conducted with assistance from DEMLR regional staff. Enforcement documents may be required to be reviewed by DEMLR central office staff prior to (or subsequent to, if time is of the essence) their delivery to the financially responsible party or their designee. The DEMLR will conduct a second in-person review(s) based on recommendations given from the first review.

Level 4 – Revoke Delegation: This recommendation would remove the authority of a local program to implement the requirements of the SPCA. **At this level, the program has failed to administer and enforce the program requirements per the SPCA, its code, or the memorandum of agreement as outlined above. Further guidance from DEMLR staff would prove ineffective.**

Implementation, including enforcement, of the SPCA would fall under the jurisdiction of the DEQ or another local program.