

**DEPARTMENT OF ENVIRONMENTAL
QUALITY**

**DIVISION OF ENERGY, MINERAL,
AND LAND RESOURCES**

**SEDIMENTATION
CONTROL COMMISSION
MEETING**

**10:00 A.M.
Thursday
February 22, 2021**

ONLINE MEETING via WEBEX
In-Person Meeting:
ARCHDALE BUILDING
GROUND FLOOR HEARING ROOM

**If you have any questions concerning this meeting, please contact
Julie Coco at (919) 707- 9215**

AGENDA

North Carolina Sedimentation Control Commission
Business Meeting

Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh North Carolina

This meeting will be held at the above location and via webinar.

May 19, 2022, 10:00 AM

The Elections and Ethics Enforcement Act mandates that the Chair inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Executive Order 34 requires any member to recuse herself or himself from voting on any matter before this Commission which would confer a financial benefit on the member. If any member knows of a conflict of interest, appearance of a conflict, or possible financial benefit please so state at this time.

Dr. Susan White, Chair, Presiding

I. Preliminary Matters

- A. Call to Order
- B. Recognition of Those Attending
- C. Swearing in of New Members, if Present
- D. Approval of Meeting Minutes from February 22, 2022

II. Action Items

- A. City of High Point Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- B. City of Wilson Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the probation of this program.
- C. City of Henderson Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- D. City of Raleigh Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.

- E. City of Rocky Mount – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.

III. **Information Items**

- A. Local Program Review Recommendations – Ms. Julie Coco
Staff is requesting feedback regarding the four levels of recommendations. This is a revision to the original advisory document that provides explanations for what would qualify a program for a level along with examples.
- B. NCDOT Report – Ms. Julie Coco
Staff will report on any Trout Buffer Waivers or ICAs issued to the Department.
- C. Commission Technical Committee – Mr. Mark Taylor
The Committee Chair will provide an update on this committee's meetings.
- D. Ad-Hoc Committee – Mr. Hartwell Carson
The Committee Chair will provide an update on this committee's meetings.
- E. Land Quality Section Active Sediment Cases and Enforcement — Ms. Julie Coco
Staff will report on the status of Civil Penalty Assessments, action on Civil Penalty Assessments, and Judicial Actions.
- F. Education Program Status Report — Ms. Rebecca Coppa
Staff will report on Sediment Education Program activities.
- G. Sediment Program Status Report — Ms. Julie Coco
Staff will report on LQS's current statewide plan approval, inspection, and enforcement activities.
- H. Land Quality Section Report — Mr. Toby Vinson
Staff will provide a report on the current number of vacancies in the Section and other LQS activities.

IV. **Conclusion**

- A. Remarks by DEMLR Director
- B. Remarks by Commission Members
- C. Remarks by Chairman
- D. Adjournment

I. **Preliminary Matters**

A. Call to Order

B. Recognition of Those Attending

C. Swearing in of New Members, if Present

D. Approval of Meeting Minutes from February 22, 2022

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
FEBRUARY 22, 2022
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 22, 2022, at 10:00 a.m. via an online webinar. The following persons were in attendance via webinar for all or part of the meeting, with Commission members being present for the entire meeting:

COMMISSION MEMBERS

Dr. Susan White (Chair)
Mr. Benjamin Brown
Mr. Mark Taylor
Mr. Michael Taylor
Ms. LaToya Ogallo (Vice-Chair)
Dr. Richard McLaughlin
Ms. Marion Deerhake
Ms. Emily Sutton
Mr. Jason Connor

OTHERS

Mr. Brian Wrenn, Director, DEMLR
Mr. Brad Cole, Regional Operations Chief, DEMLR
Mr. Toby Vinson, Program Operations Chief, DEMLR
Mr. Graham Parrish, State Assistant Sedimentation Specialist, DEMLR
Ms. Julie Coco, State Sedimentation Specialist, DEMLR
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office
Ms. Tamera Eplin, DEMLR-Winston Salem Regional Office
Ms. Kimberly Turney, DEMLR-Winston Salem Regional Office
Ms. Alaina Morman, DEMLR Stormwater
Mr. Josh Kastrinsky, DEMLR
Ms. Sarah Zambon, Commission Counsel, Attorney General's Office
Mr. Tom Gerow, NCFS
Ms. Karyn Pageau, Wake County
Ms. Ashley Rodgers, Wake County
Mr. Jeevan Neupane, Wake County
Ms. Carrie Mitchell, Town of Wake Forest
Mr. Kirk Stafford, Town of Cary
Mr. Cass Heaton, Greensboro
Mr. Joe Allen, Macon County

Ms. Anita Simpson, High Point
Mr. Trevor Spencer, High Point
Mr. Nick Tosco, Attorney representing the city of High Point
Ms. Sila Vlachout, High Point
Mr. Scott Ford, High Point
Ms. Meghan Maquire, High Point
Ms. JoAnne Carlyle, High Point
Mr. Greg Ferguson, High Point
Ms. Kathy Blake, High Point
Mr. Joel Ferguson, High Point
Mr. Jon Shepherd, High Point
Mr. Earl Davis, Guilford County
Mr. Ike Archer, Knightdale
Mr. John Stover, Knightdale
Mr. Phillip Bunton, Knightdale
Mr. Chris Millis
Mr. Mike Horney
Mr. Peter Kane

PRELIMINARY MATTERS

Dr. White called the meeting to order at 10:02 am

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts.

Dr. White asked for a motion to approve the minutes from the November 4, 2021, meeting. Dr. McLaughlin moved to approve the minutes. Ms. Ogallo made a second; the motion passed.

ACTION ITEMS

County of Macon Local Program Review

The recommendation was made to continue the county's delegation. Dr. McLaughlin made a motion to approve the recommendation made by the DEMLR staff. Mr. Mark Taylor made a second; the motion passed.

City of High Point Local Program Review

The staff recommendation was made to revoke the city's delegation. Commission members asked questions regarding the recommendation and what would happen to projects if the delegation was revoked. Staff addressed the comments.

Much of the discussion centered around whether surrounding local programs and the DEMLR regional office had capacity if the city's program was revoked. Staff addressed the comments. Other members noted that this capacity should not be a factor in the commissions' decision. City staff presented comments in defense of the city's program and provided further context regarding staff's report. Further discussion ensued. Mr. Mark Taylor made a motion to place the program on probation for a period of three months. Dr. McLaughlin made a second; the motion passed.

City of Rocky Mount Local Program Review

The recommendation was made to continue the city's delegation with review for three more months. Mr. Michael Taylor made a motion to approve the recommendation made by the DEMLR staff. Dr. McLaughlin made a second; the motion passed.

City of Greensboro Local Program Review

The recommendation was made to continue the city's delegation. Dr. McLaughlin made a motion to approve the recommendation made by the DEMLR staff. Ms. Sutton made a second; the motion passed.

City of Greenville Local Program Review

The recommendation was made to continue the city's delegation. Mr. Mark Taylor made a motion to approve the recommendation made by the DEMLR staff. Dr. McLaughlin made a second; the motion passed.

Town of Knightdale Ordinance Review

Ms. Coco introduced the town's ordinance as adopted by their council. She brought Counsel comments to the attention of town staff and to the commissioners. Chair White asked about the program's capacity to manage a program. Ms. Coco answered in regards to full-time equivalent (FTE) positions while town staff stated that they are hiring additional staff to provide 1.5 FTEs and have a private engineer on retainer. Ms. Ogallo made a motion to approve the Town of Knightdale's ordinance and to receive delegated authority for administering the Sedimentation Pollution Control Act of 1973. Ms. Sutton made a second; the motion passed.

INFORMATION ITEMS

NCDOT Report

Ms. Coco reported on the one trout buffer waiver issued to the Department of Transportation from this past quarter.

Commission Technical Committee

Mark Taylor is the Chair for this committee. Meetings are being held monthly, with workgroups providing updates as to their progress. The workgroups are considering practices out of the NCDOT manual, best practices in other states, as well as their own experience in evaluating the practice standards.

The committee hopes to be able to hold an in-person meeting before too long.

Land Quality Section Active Sediment Cases and Enforcement

Ms. Coco reported on the status of civil penalty assessments and judicial actions.

Education Program Status Report

The Sedimentation Education Specialist made several appearances from November through February at career fairs or schools to distribute education materials on behalf of the program. Ms. Coppa also helped moderate a stormwater webinar and facilitate meetings for other educators.

The 2022 Local Program Workshop and Awards Program has been scheduled for April 19 & 20 at the Union County Agricultural Center, and is being planned in coordination with the Water Resources Research Institute (WRRRI).

Sediment Program Status Report

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities. Numbers were available through the end of January.

Land Quality Section Report

Mr. Vinson deferred this conversation to the DEMLR Director to address in his remarks.

CONCLUSION

Remarks by the Director –

Following the November 2021 SCC meeting and in response to the omicron variant of COVID-19, the Department reverted back to a primarily telework schedule. As of February 14, 2022, the Department has returned to normal operations with staff limited to a 2 days per week telework schedule and supervisors and managers limited to one day per week.

With approval of the FY2021-2023 budget in November 2021, the Division was provided an opportunity to significantly increase staff in the Erosion and Sedimentation Control Program. Overall, the Division has been approved to add 41 new positions. The addition of these positions will increase the Division staff by 36%. The positions break down as follows:

- The Department received \$2.5 million dollars of appropriated funds for permitting positions. DEMLR received funding to hire 6 engineer positions in 6 of the 7 regional offices. The primary function of these engineers will be to review erosion & sediment control (ESC) plans and stormwater permit applications. All 6 positions have been created and the hiring process has begun.
- The per acre fee for review of erosion and sedimentation control plans was increased from \$65 to \$100. This increase along with an existing sediment fee fund balance will allow DEMLR to hire 12 new erosion and

sedimentation Program staff across the 7 regional offices. These positions include 6 – environmental program consultants, 3 – engineers, and 3 – environmental specialists. These positions will work on ESC plan reviews and compliance inspections.

- The Department was also given a 3% administration fee for the \$1.7 billion infrastructure grant program. The Division was allocated an additional 23 positions from this funding. These positions will be dedicated to reviewing ESC plans and stormwater permit applications for infrastructure projects which have been awarded grant funds. Twenty-one of these will be in the 7 regional offices and 2 will be in the central office and will include 11 engineers, 1 environmental program consultant, and 11 environmental specialists.

Remarks by Commission Members – None

Remarks by the Chair –The Chair thanked everyone for staying engaged for the duration of the meeting, and thanked the DEMLR for their reports.

Adjournment – Chair White adjourned the meeting at 2:15 pm.

Julie Coco, State Sediment Engineer
Division of Energy, Mineral, and Land
Resources

William Vinson, Jr.
Chief of Program Operations
Division of Energy, Mineral, and
Land Resources

Susan White, Chair
Sedimentation Control Commission

II. Action Items

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- E. City of Rocky Mount Review – Mr. Graham Parrish

Local Program Report to the SCC City of High Point Follow up, May 19, 2022

A report was presented to the Sedimentation Control Commission (SCC) on February 22, 2022, based on the initial formal review conducted on February 9, 2021, follow up reviews conducted on July 21, 2021, and January 25, 2022, and the subsequent continued review periods. The Commission voted to place the program on “Probation” for 3 months with a follow up report to be presented during the 2nd quarterly meeting of 2022. DEMLR staff conducted a follow up review on April 26, 2022. Throughout the probationary period, the City has provided updates on active projects and additional information requested by DEMLR. During our initial and first follow up reviews it was noted that the workload was not sustainable with the staffing level at the time. It was also noted that the program was not effectively monitoring sites for compliance and once sites were found out of compliance there was little to no follow up or enforcement actions taken by the City to bring a site into compliance.

Follow up:

During the period from January 2022 through April 2022, the City reviewed or re-reviewed 38 plans, issued 12 approvals, 22 disapprovals and conducted 430 inspections. During this period the City issued 18 NOVs, 1 SWO and 3 CPAs. Following recommendations made by DEMLR staff, the City has hired 2 additional full-time staff since our initial review. The City reports that the 2 additional inspectors were trained before redistributing the workload at the beginning of 2022. This brings their current FTE count to 5. The City also conducted an internal audit and found that projects had been duplicated or previously closed out but had not been removed from their project lists. The City reports that they currently have 56 open projects which is a significant reduction from the 109 average number they reported last year. Throughout the probationary period the City was required to provide DEMLR with all reports from inspections conducted on the 11 projects previously reviewed as well as 1 new project selected at random. In addition to inspection reports, the City was to provide all NOVs, CPAs or SWOs and corresponding inspection reports.

1. Keystone at Penny Road:

This project was previously reviewed during our follow up reviews on 7/21/2021 and 1/25/2022. This project consists of 17.9 acres disturbed for residential development. The City previously issued a SWO to this site for significant sediment loss after our inspection conducted on 7/21/2021. The City lifted this SWO on 10/7/2021 conditioned upon an evaluation of possible wetlands by an environmental consultant and possible changes to the plans as a result. The City has not allowed any land disturbance in the phase where potential wetlands are located until these items have been completed. During recent inspections, the City found this site to be out of compliance on 3/17/2022 and then in compliance on 3/31/2022 and 4/13/2022. We conducted an inspection of this site during our follow up review on 4/26/2022. Stormwater pipes were onsite, and grading was still underway. The stream crossing where significant sediment loss had previously occurred appeared to be maintained and no further signs of loss were noted. One section of silt fence had been run over to access an easement. This fence needed to be reinstalled or repaired. Areas throughout the site which were not actively being worked needed to be stabilized appropriately. Overall, this site was out of compliance, needing to stabilize bare areas and general maintenance needs on basins and sections of silt fence throughout. No offsite

sedimentation was noted, and the overall condition of measures had notably improved compared to previous inspections.

2. The Landing at Sycamore Creek:

This project was initially reviewed during our follow up on 1/25/2022. At that time this site had been found out of compliance by the City for multiple consecutive inspection reports. Following our review, the City issued an NOV on 2/1/2022. The City conducted a follow up inspection and found this site to be in compliance on 2/10/2022. The City found that this site was out of compliance due to sediment loss and issued another NOV on 3/15/2022. The City required a revised plan to address the low area where a skimmer basin had been removed and sediment was leaving the site again. The City conducted a follow up inspection on 4/11/2022 and found this site to be in compliance. The approved revised plan had been implemented properly and all sediment lost had been cleaned up. We conducted an inspection of this site during our follow up review on 4/26/2022. The riprap dissipator pad, diversion ditch with wattles and check dams appeared to be installed correctly and maintained. The areas which were disturbed to install these measures had been regraded, seeded, and matted. Vegetation was being established in the area where the sediment had been removed from cleanup and at all matted areas. Home building on a few lots had begun; silt fence around the active home building needed to be maintained and the street cleaned. Overall, this site was out of compliance due to general maintenance of individual lot measures and needing to clean the street around active lots to prevent sediment from flowing down the street and offsite. No offsite sedimentation was noted.

3. Westmoreland Place Ph. 2:

This project was initially reviewed during our follow up on 4/26/2022. This project consists of 50.4 acres disturbed for residential development. The City initially approved the plan for this project on 11/22/2017. As this construction progresses and a home builder buys lots, the City has received periodic requests to transfer coverage of said lots under the builders' responsibility. The City approved an initial transfer on 9/7/2021 and indicated that they have since transferred additional lots upon the builders' requests. The City has not required an updated FRO form or confirmed through property deeds that these lots have been bought by the builder. The City issued an NOV to this site on 3/18/2022 following an inspection conducted on 3/17/2022. The NOV was issued for failure to take measures to protect property, failure to follow the approved plan and failure to maintain temporary measures. The skimmer basin forebay had blown-out and was eroding away; baffles had fallen over and the dissipator pad for the basin outlet was not functioning properly. The emergency spillway had not been properly installed and the diversion ditches needed to be regraded and stabilized. Individual lot measures and wattles used for curb inlet protection measures needed to be repaired or maintained. The City also noted that the sediment in the streets needed to be removed. The NOV stated a 15 working day deadline from the receipt of the NOV to bring the site into compliance. Taking rainfall data into consideration, the City noted that this site was to be in compliance by 4/28/2022. During our inspection on 4/26/2022 we found that this site had made substantial progress towards resolving all required corrective actions listed in the NOV. The skimmer basin had been cleaned out and the forebay, emergency spillway and baffles had been reinstalled. The outlet dissipator pad had been extended and refreshed to ensure proper functioning. The diversion ditch had been regraded and check dams installed. All areas disturbed for this work had either been matted or covered with seed and straw. It was evident that the streets had been cleaned and wattles had been replaced.

The silt fence and construction entrance on a few individual lots still need to be maintained but overall, this site had addressed most of the violations and areas of concern noted by the City. The City conducted a compliance inspection on 4/28/2022 and found that all corrective actions had been completed and therefore, lifted the NOV.

4. Chipotle – Main St:

This project was initially reviewed during our follow up on 4/26/2022. This project consists of 1.25 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, a copy of the property deed, the FRO form, design calculations and previous inspections. The approved plan went through 2 review cycles. The plan was approved on 2/14/2022. The City had conducted 1 inspection prior to our review. During the day of our follow up, the building foundation had been installed and the stormwater system was being installed. Silt fence throughout the site needed to be reinstalled properly in some sections. One of the existing entrances had wattles installed but did not extend completely across the opening in the silt fence. Sediment was leaving the site and flowing into the road and down the curb line. This sediment needed to be removed and the street cleaned as well as silt fence extended across the entrance per the approved plan. It was also noted that inlet protection measures would need to be installed as the stormwater system was being completed. The City issued an NOV to this site on 5/2/2022 following our inspection.

Conclusion:

During the probationary period, the City has worked diligently to address the concerns noted and discussed during the previous reviews and continued review periods. The City reviewed its project list and found several projects that had been duplicated or closed out and not removed from the list. The City currently has 56 open projects and reported that inspection frequency has increased to at least monthly but may actually be closer to twice a month. Throughout the probationary period, the City provided DEMLR with inspection reports for the 11 projects which we had previously reviewed, and an additional project chosen at random, as well as NOV's, CPAs and corresponding inspection reports. The City states that an NOV will be issued to a site after continuing violations are found on the 3rd consecutive inspection and whenever offsite sedimentation has occurred. In review of the inspection reports and NOV's provided, the City appears to be implementing this practice with NOV's being issued following the 3rd out of compliance inspection report. The City has issued 18 NOV's between January and the end of April. The City has conducted follow up inspections finding that 12 sites were in compliance within the deadline set in the NOV. The City found that three sites remained out of compliance by the deadline given and issued a CPA to each. Three NOV's are still open with the deadline for compliance yet to be reached. Over the last few months, the City has taken a new approach to getting sites into compliance. A significant concern during the previous reviews was the City's willingness and attitude towards using the enforcement tools available to them to bring sites into compliance. Throughout the probationary period, DEMLR staff has noted the effort and dedication that City staff have put into addressing the deficiencies of the program. Although 3 sites were out of compliance during our follow up review, no offsite sediment was noted, and a pattern of violations left unresolved was not evident. The City has demonstrated its ability and willingness to issue NOV's and CPAs when necessary to compel compliance on sites. City staff have shown their ability to conduct an adequate inspection. All three city inspectors have obtained the NCDOT Level II Erosion and Sediment Control Certification. City staff also

attended the Local Program Workshop in April. The City must continue to use the tools available to them while monitoring and enforcing the SPCA of 1973. The City will need to start obtaining proper documentation when transferring part of or a whole plan to a new financially responsible party. The local ordinance is outdated and will need to be updated in adherence to the 2021 Model Ordinance. A process for hearing and deciding civil penalty appeals as well as penalty remission requests in the City's ordinance is devoid. The City has indicated that updates are underway and will be completed in the coming months. DEMLR staff have noted that City staff have the ability and knowledge to implement an effective program and have demonstrated their willingness to follow through with enforcement actions when needed to bring sites into compliance. The City is no longer allowing sites to remain out of compliance inspection after inspection with no repercussions.

DEMLR staff will recommend to "Continue Delegation" of the City of High Point Erosion and Sedimentation Control Program conditioned upon their ordinance being updated to include, among other language, the civil penalty appeals process, and the remission process by the time of the Q4 Commission meeting held in November of 2022. The City should continue to work to improve their program and fulfill the authority delegated to them.

This report was prepared based on the initial formal review conducted on 2/9/2021, follow-up reviews conducted on 7/29/2021, 1/25/2022 and 4/26/2022, and the continued review and probationary periods in between and will be presented to the Sedimentation Control Commission during its 2022 Q2 meeting on May 19, 2022.

Local Program Report to the SCC City of Wilson Follow Up, May 19, 2022

On June 16, 2021, personnel from the NCDEQ DEMLR, conducted a review of the City of Wilson's Erosion and Sedimentation Control Program. A report based on this review was presented to the Sedimentation Control Commission (SCC) on August 17, 2021, who voted to place the program on Probation for 8 months with a follow up report to be presented during the 2022 2nd quarterly meeting on May 19th, 2022. During our initial review the following issues and required actions that the program should implement to address said issues were noted:

Issues Noted:

- The City is providing a pre-review meeting for some projects prior to receiving the complete application and conducting a formal review. This a good practice to streamline the formal review process; however, plans are not always reviewed, and notification of the review decision is not being sent out within statutory deadlines.
- Approved plans were not all drawn at an adequate scale. Proposed silt fence, limits of disturbance (LOD) and grade lines were sometimes difficult to distinguish from each other and other features on the plan. Multiple phases of the plan were shown on one plan sheet and lacked sequencing of how to conduct the construction during and in-between each phase.
- While regular inspections are good and areas of non-compliance are being documented, corrective actions taken by the contractor are not being documented making areas of continued non-compliance difficult to distinguish and does not provide documentation of when contractors are being responsive and bringing sites back into compliance.
- Certain sections within the local ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code pertaining to that which constitute the delegation authority for erosion and sedimentation control.

Required Actions:

- Once a complete application is received, plans are to be reviewed, and the applicant 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).
- When plans are drawn at a scale which makes measures, contours, LOD and/or perimeter measures difficult to see, plans should not be approved, and a larger scale plan set should be required. Plans should be drawn to clearly distinguish between phases and should be labeled as such. The construction sequence and notes should address the transition between phases and erosion control measures during said transitions. If the proposed plan is found to be inadequate or drawn at an illegible scale, the plan should be disapproved, and a disapproval letter should be sent out to notify the applicant within the appropriate time-period.
- Multiple reports showing the same areas needing maintenance or repair suggests that no corrective actions have been taken and out of compliance areas are continuing violations of the SPCA. Inspectors should note when corrective actions have been taken and

whether areas are a continuing violation or due to a subsequent rain event after corrective actions were taken. When areas of non-compliance persist, the use of enforcement should be considered. NOV's should be issued in cases where sites are continuously found to be out of compliance, are non-responsive to previous inspection reports and communications from inspectors, or when offsite sedimentation due to violations is found. G.S. 113A-61.1 and MOA Part III(E).

- The local ordinance should be updated to meet the changing requirements of the program. It appears that the local ordinance has not been updated in at least ten years. The Commission recently approved an updated Model Ordinance, and it is available on the NC DEQ Erosion and Sedimentation Control website.

Follow up:

During the probationary period the City provided periodic updates and has provided documentation to DEMLR staff. DEMLR Regional and Central staff conducted two days of oversight inspections and conducted a follow up review on April 13, 2022. During the probationary period from August 2021 through April 2022, the City reported that they have conducted 25 reviews or re-reviews, issued 13 approvals and 6 disapprovals. The City also conducted 177 inspections and issued 17 NOV's and 1 SWO. During the probationary period, City staff faced Covid-19 related complications resulting in little to no program activity during the months of September and October. The City has reported that they are in the process of restructuring the program's staffing to include an engineer and two inspectors that would contribute to the program FTE count to replace the previous 1 staff responsible for plan reviews and inspections. Until this staffing change has been completed, the City has contracted with an engineering consultant to conduct plan reviews and currently splits inspection duties between 2 inspectors. The City indicated that proposed plans are submitted to the City and then forwarded to the consultant, at which point the consultant is to conduct a review and provide comments to the City within 10 days. All official letters are being sent by the City to the applicant. The City is currently reporting 1 FTE and 26 open projects. The staffing changes would sustain the 1 FTE and provide the ability to increase time dedicated to the ESC program as workload increased.

The following is a summary of a few projects that were reviewed during the probationary period:

1. Evolve Phase II:

This project consists of 18 acres disturbed for residential development. The City issued an NOV to this site on 10/25/2021. The City found this site to be in compliance on 11/3/2021 and lifted the NOV. The City issued a second NOV to this site on 1/5/2022 noting that sediment was leaving the site in multiple locations and materials were being stored beyond the limits of disturbance. DEMLR and City staff conducted an inspection on this site on 1/28/2022 as part of our second oversight inspection day. At the time of our inspection this site remained out of compliance. Sediment was still leaving the site and flowing onto the Phase I parking lot where residents were already living. The drainage swales between buildings had been driven through and were not functioning. Numerous bare areas throughout the site needed to be stabilized as well. Following our inspection, the City issued a Notice of Continuing and Additional Violations (NOCAV). The City conducted a follow up inspection on 2/16/2022 and found this site to be in compliance. We conducted an inspection of this site during our follow up review on 4/13/2022 and found that sediment was again leaving the site onto the Phase I parking lot. Diversion ditches

between two buildings had been repaired and drop inlet protection measures had been removed in preparation for sodding. The other two swales had not been repaired and inlet protection measures were damaged. Diversion ditches had been driven over and no longer appeared to be functioning. The slope running behind the buildings, diversion ditches and inactive areas need to be stabilized per the approved plan. Overall, this site was out of compliance with minor sediment losses noted.

2. Cranberry Ridge Phase II – Section 3:

This project consists of 6.5 acres disturbed for residential development. This project was reviewed during our initial review on 6/16/2021. DEMLR and City staff conducted inspections on this site during both days of oversight inspections and during our follow up review on 4/13/2022. On the day of our follow up review this site was in compliance. The City indicated that this site was slowly progressing, and little activity had occurred since our last oversight inspection on 1/28/2022. The site remained well stabilized and perimeter silt fence appeared to be functioning. The construction entrance and skimmer basin appeared to be maintained and functioning properly. Overall, this site was in compliance.

3. Bojangles:

This project consists of 3 acres disturbed for commercial development. This project was initially reviewed during our follow up review on 4/13/2022. On the day of our review, this site was nearing completion. The areas surrounding the sidewalk were being prepped for sod and the parking lot was being paved. Silt fence was still installed around the area where the stockpile had been located and appeared well maintained. Self-inspection records after February were not available onsite. Overall, this site was out of compliance for failing to self-inspect. Self-inspections under the SPCA are to be conducted during or after each phase of the plan as described in 15A NCAC 04B .0131 and G.S. 113A-54.1(e). Additional weekly and rain-event self-inspections are required under the NPDES Construction General Permit No. NCG01, however locally delegated erosion and sediment control programs are not delegated the authority to enforce the NCG01 requirements. No signs of sediment loss were noted.

Conclusion:

During our initial review it was noted that some approved plans were drawn at an inadequate scale making measures difficult to distinguish from one another and lacking descriptive construction sequencing and phasing. It was also noted that while inspections were being conducted frequently, sites would remain out of compliance with no corrective actions taken by the developers and little to no actions taken by the City to bring sites into compliance. During the probationary period, the City was required to submit inspection reports, proposed ESC plans, plan review documents and enforcement documents. DEMLR noted a shift in willingness and effort towards using enforcement tools available to bring sites into compliance. The City has taken steps toward addressing the deficiencies previously noted but have been hindered due to the ongoing global pandemic resulting in prolonged staff absences. The City has begun the process of restructuring the staff which contribute to the ESC program. The City will propose the reclassification of the ESC administrator position to an engineer in the upcoming budget. Following the approval of this reclassification, the program will consist of 1 engineer to oversee administration and plan reviews and 2 inspectors to conduct site inspections. The City is also working to update their local ordinance pursuant to the 2021 Model Ordinance to reflect all

recent changes in the general statutes and administrative code. The City is anticipating having approval for the engineer position and updates to the Local Ordinance in June and July of 2022. The City has updated its template letters, inspection reports and review policies to ensure that plans are reviewed, and a decision rendered with proper documentation within the appropriate timeframes. Until the City has received approval and filled the new engineer position, plan reviews will be contracted out to an engineering consultant. The City has developed a specific procedure for this process to ensure that the responsibilities of the program are being met. The City states that they are currently conducting formal inspections every two weeks though inspectors are onsite even more frequently for other inspection duties. The City has demonstrated a willingness and desire to address all deficiencies and implement an effective program but must continue to work to address the question of staffing and demonstrate a consistent fulfillment of their program responsibilities.

DEMLR staff recommends that the City of Wilson's Erosion and Sedimentation Control Program be placed on "Probation" again for 3-months with a follow up report to be presented at the 2022 Q3 meeting, while City works to implement the changes to their staffing structure and updates to the local ordinance. The City shall continue to work to address the deficiencies noted during our initial review and demonstrate that the City can effectively implement the authority delegated to them.

This report was prepared based on the initial review conducted on June 16, 2021, follow up review conducted on April 13, 2022, and the probationary period which followed and will be presented to the Sedimentation Control Commission during its 2022 Q2 meeting on May 19, 2022.

Local Program Report to the SCC City of Henderson, May 19, 2022

On March 9, 2022, personnel from the NCDEQ Land Quality Section, conducted a formal review of the City of Henderson Erosion and Sedimentation Control Program. The City of Henderson was last reviewed on 10/14/2014. The City currently has 1 staff member who contributes approximately 0.25 full time equivalents to the erosion control program. The City requires an erosion and sediment control plan for all projects which disturb greater than 0.5 acres or greater than 1 acre if only a single-family residence is involved. Jurisdiction of the program covers all areas within the City of Henderson's corporate limits. During the past year from March 2021 through February 2022, the City conducted 1 plan review and approved 1 plan. During the same period the City conducted 124 inspections and issued 1 NOV. No CPAs or SWOs were issued. The City has not been providing official documentation for project close out and was informed of the need to indicate on inspection reports or through a "close-out" letter that projects have been completed and are permanently stabilized. This documentation serves to release a project under the requirements of the SPCA, as well as will be used to terminate coverage under the NCG01 permit if applicable. At the time of our review the City only had 1 open project which had not been completed and stabilized. This open project had received approval but had not yet begun land disturbance. During our review of the program, we looked at the project files for two projects and we conducted an inspection on one project which had previously been completed.

The following is a summary of the projects that were reviewed:

1. St. Charles Place Apartments:

This project consisted of 8.3 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, past inspection reports and the FRO form. A letter of consent between the landowner and financially responsible party was missing from the project file. The plan for this project was initially received by the City on 5/8/2020 and the Letter of Approval was sent on 5/18/2020. The approved plan appeared to be adequate. The City had conducted 38 inspections on this project prior to the day of our review. The last inspection the City conducted was on 8/12/2021, at which time they found this project to be completed and the site permanently stabilized. During the day of our review, we conducted an inspection of this site, this site appeared to have been properly stabilized and all temporary measures had been removed. The City is not currently providing any type of official closeout documentation once a project is found to be completed and stabilized. State staff provided the standard language that is included on closeout inspection reports and clarified the process of closing a project. City staff indicated that they would make adjustments to their template inspection report to include this language when conducting a final inspection and closing a project.

2. The Landing at Henderson:

This project consisted of 6.0 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations and the FRO form. A copy of the property deed was missing from the project file. The plan for this project was initially received by the City on 9/21/2021 and approved on 9/22/2021. The approved plan for this project appeared to be adequate. This project had not yet begun construction at the time of our review.

Positive Findings:

During our review we noted a few positive aspects about the City of Henderson Erosion and Sedimentation Control Program including:

- The City has a stricter criterion than the State when requiring an erosion and sediment control plan. The City requires plans for all projects disturbing greater than 0.5 acres or 1 acre if only a single-family residence is involved.
- The City includes reference to the NCG01 permit and the process to obtain coverage in their letters of approval.
- The City is conducting erosion and sediment control inspections weekly.

Issues Noted and Required Actions:

During our review we found that the City of Henderson Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of land ownership was not kept in all project files.
- A letter of consent was not obtained when the landowner and financially responsible party differed.
- Certain sections within your ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control.
- The Program has previously reviewed, approved and monitored projects which fall under the exclusive jurisdiction of the commission.
- Letters of Approval were absent of language conditioning the approval of the erosion and sedimentation control plan upon compliance with federal and state water quality laws, regulations, and rules.
- No official documentation of a project closeout is being kept once construction has been completed and the site has been permanently stabilized.

The City shall implement the following changes to correct the deficiencies found during our review and noted above:

- Documentation of Land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0188(c). A copy of the property deed should be obtained and retained in each project file.
- Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the erosion and sediment control plan must include the landowner's written consent for the applicant to submit a plan to conduct the land-disturbing activity. G.S. 113A-54.1(a). A consent letter should be obtained and kept in the project file when the landowner and financially responsible party differ.
- The local ordinance was last updated in 2016 and should be updated to reflect the most recent state statutes and administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The Commission recently approved an updated Model Ordinance at their November 2021 meeting. This can be found on the Local Erosion and Sediment Control Programs Website.
- The Commission retains exclusive jurisdiction over certain land disturbing activities as listed under G.S. 113A-56(a). Any projects funded in whole or in part with public monies should be referred to the DEMLR Regional Office for review, approval, and monitoring.
- A local government shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws,

regulations, and rules. G.S. 113-61(b1). Letters of approval should include language as such. A template letter of approval can be found on the Local Program Reporting SharePoint site.

- Documentation in the form of comments on a final inspection report or a “close out” letter should be provided when projects are found to be completed and sites stabilized.

Recommendations for improvement:

DEMLR staff has also put together a list of recommendations that would help to improve the program:

- Update all template letters and inspection reports to reflect the most current references to the North Carolina Administrative Code and your local ordinance once its is updated. Template letters and inspection reports with the most recent references to the NCAC rules and State Statutes can be found on our Local Program Reporting SharePoint site.
- Developing a set of Standard Operating Procedures or guidance documents for different aspects of the program or staff positions, will help to provide consistency and uniformity throughout the program. These documents can also provide expedited training during times of staff turnover or in cases of prolonged absence.

Conclusion:

During our formal review of the City of Henderson Erosion and Sedimentation Control Program we found a few minor deficiencies. The City will need to adjust the documentation required prior to plan approval to ensure that a copy of the property deed and letter of consent, when applicable, are obtained and retained in each project file. The City will also need to update the local ordinance, letter and inspection report templates to reflect the most recent state statutes and rules. State staff reminded the City that publicly funded projects should be referred to the DEMLR Regional Office as they fall under the exclusive jurisdiction of the Commission. The City should also address the project closeout process and ensure that documentation is provided when projects are found to be completed, permanently stabilized, and released under the SPCA. Based on the review of previous inspection reports, City staff is conducting adequate inspections and continuing to monitor all sites frequently throughout the life of a project. Approved plans appeared to be adequate and had been reviewed within the required timeframes. City staff demonstrated their knowledge and understanding of erosion control practices and appeared to effectively be implementing their delegated authority.

DEMLR staff recommends to “Continue Delegation” of the City of Henderson’s locally delegated erosion and sediment control program.

This report has been prepared based on the formal review of the City of Henderson Erosion and Sedimentation Control Program conducted on March 9, 2022 and will be presented to the Sedimentation Control Commission (SCC) during its 2022 Q2 meeting on May 19, 2022.

Local Program Report to the SCC City of Raleigh, May 19, 2022

On March 24, 2022, personnel from the NCDEQ Land Quality Section conducted a formal review of the City of Raleigh Erosion and Sedimentation Control Program. The City of Raleigh was last reviewed on 2/9/2016. The City has 14 staff that contribute approximately 7 full time equivalents to the erosion control program. The City requires an erosion and sediment control plan for all projects disturbing greater than 12,000 square feet. Jurisdiction of the program covers all areas within the City of Raleigh corporate limits and extra territorial jurisdiction (ETJ). During the period of March 2021 through February 2022, the City conducted 726 plan reviews or re-reviews with 620 disapprovals issued before approving 106 plans. During this period, the City conducted 7,475 inspections and issued 14 NOVs. No CPAs had been issued during this period; however, the City reported that one was issued just prior to this period on 2/15/2021. The City stated that they can and will place a hold on all construction inspections and/or permits as an additional tool to bring a site into compliance. At the time of our review the City had 265 projects. On the morning of our review, the area received approximately 0.47 inches of rain. During our review of the program, we looked at four project files. Due to time constraints, we conducted inspections on only three projects.

The following is a summary of the projects that were reviewed:

1. Milburnie Ridge (File Review Only):

This project consists of 45.3 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. A copy of the property deed was missing from the project file. The approved plan for this project appeared to be adequate from a design standpoint, however the plans were missing a construction detail for silt fence. The plan for this project went through 4 review cycles and was approved by the City on 5/13/2021. Construction on this project began at the end of September 2021 and the City had conducted 11 inspections prior to the day of our review. The City had recently issued an NOV to this site on 2/28/2022. The FRP received the NOV on 3/8/2022 and was given 10-days to bring the site into compliance. The City conducted a follow up inspection on 3/18/2022 and found that while progress had been made to address the violations noted in the NOV a recent rain had prevented all corrective actions from being completed. The City allowed an extension of the deadline in order to resolve all remaining violations. The City conducted a follow-up inspection on 3/28/2022 and found that all corrective actions in the NOV had been completed.

2. Glenlake Office Building III:

This project consists of 4.2 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. The disturbed acreage shown on the approved plan differed from the disturbed acreage indicated on the FRO form. A copy of the property deed was missing from the project file. The plan for this project went through 2 review cycles and was approved by the City on 12/1/2021. The approved plan for this project appeared to be adequate. This project began construction in December 2021 and the City had conducted 7 inspections prior to our review. The City found this site to be in compliance during its most recent inspection on 3/9/2022. No NOV's or CPAs have been issued to this project. On the day of our review, concrete for the parking deck basement was being poured. One inlet protection device needed to be maintained

and a section of slope needed to be stabilized. Perimeter silt fence and the remaining inlet protection devices appeared to be well maintained. The construction entrance had been installed and was well maintained. Self-inspection records were incomplete or improperly filled out. Obtaining coverage under the NPDES Stormwater Permit (NCG01) is the first step in the construction sequence of the approved plan. This project had not obtained coverage and was therefore out of compliance for failing to follow the approved plan. It should be noted that the local program is not delegated to enforce these violations. It is a request by DEMLR staff that the City monitor for violations of this nature and refer them to the DEMLR Regional Office. Overall, this site had measures installed and needed some general maintenance. No offsite sedimentation was noted. The City conducted a follow-up inspection on 3/31/2022 and found this site in compliance. The inlet protection device had been maintained and slopes matted.

3. Altair:

This project consists of 10.6 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. A copy of the property deed was missing from the project file. The plan for this project appeared adequate from a design standpoint; however, the plan was missing a construction detail for riprap aprons which were shown on the plans. The plan for this project underwent 4 review cycles and was approved by the City on 5/21/2021. This project started construction in July 2021 and the City had conducted 19 inspections prior to our review. The City found this site to be in compliance during its most recent inspection on 3/17/2022. No NOV's or CPAs have been issued to this project. On the day of our review, grading of the roadbed had begun and retaining walls were being installed. A stream crossing and culvert had been installed and stabilized per the approved plan. Rills had started to form along some slopes and needed to be repaired and restabilized; however, it appeared that the majority of slopes and completed areas were being stabilized properly. Inlet protection devices had been installed and appeared to be maintained. One sediment basin needed maintenance. The staking for the baffles left a long run with no support in the middle of the basin and the flexible arm of the skimmer was covered in mud which would not allow the skimmer to function properly as the water level rose. Overall, this site was out of compliance, needing to repair and maintain some measures. No offsite sedimentation was noted. The City conducted a follow-up inspection on 3/31/2022 and found that all corrective actions had been completed and the site was in compliance.

4. Stony Brook:

This project consists of 4.75 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, previous inspections and the FRO form. A copy of the property deed was missing from the project file. The approved plan contained stabilization timeframes that contradicted those of the NCG01 permit, and the baffles shown on the plans were too close together and did not create equal sections. The plan for this project underwent 2 review cycles and was approved by the City on 10/7/2021. This project started construction in September 2021 and the City had conducted 8 inspections prior to our review. The City found this site to be in compliance during its most recent inspection on 3/17/2022. No NOV's or CPAs have been issued to this site. On the day of our review, utilities had recently been installed and the building pads were being prepared for foundations to be poured. Inlet protection devices throughout the site were installed and appeared well maintained. The construction entrance was maintained and functioning. Silt fence throughout the site needed to be maintained or repaired. The skimmer basin appeared to be functioning and stable, however

the baffles were not properly spaced. City staff recommended that an additional baffle be installed. Sediment loss was noted in the southeast corner of the site. Silt fence in this areas had recently been repaired per City guidance during previous inspections but was not keyed in properly and a small amount of sediment had been lost at this location just beyond the silt fence outlet. Slopes throughout the site needed to be stabilized. Overall, this site was out of compliance, needing to maintain silt fence, clean minor sediment loss and stabilize completed areas.

Positive Findings:

During our review we noted a few positive aspects about the City of Raleigh Local Erosion and Sediment Control Program including:

- The City has a stricter criterion than the State when requiring an erosion and sediment control plan. The City requires a plan for all projects which will disturb greater than 12,000 sq. ft.
- The City requires that any 404/401 permits must be obtained and submitted as part of the complete application prior to the approval of the erosion and sediment control plan.
- The City is conducting inspections on a bi-weekly basis.
- The City requires a preconstruction meeting for all projects.
- The City provides reference to the NCG01 permit process in their approval letters and on the City website.

Issues Noted and Required Actions:

During our review we found that the City of Raleigh Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of land ownership was not kept in all project files.
- Letters of Disapproval are not being sent with the ability to track when the applicant receives the letter.
- A few inconsistencies were noted while reviewing approved plans and project files. On two plans, measures were proposed but a construction detail was not included for said measures. Also, on two projects the disturbed acreage indicated on the approved plan was larger than the disturbed acreage shown on the FRO form.
- City staff are not checking that self-inspection records are being properly filled out and kept onsite during site inspections.

The City shall implement the following changes to correct the deficiencies found during our review and noted above:

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0188(c). City staff indicated that they will often verify an indicated landowner by searching the property deed themselves; however, a record of the deed is not kept in the project file. A copy of the property deed should be obtained and retained in each project file.
- When plans are reviewed and found to be inadequate, comments can be sent to the applicants and addressed within the 30-day review period prior to an official decision being rendered. Applicants can resubmit at any time prior to an official review decision being rendered. The disapproval of a proposed erosion and sedimentation control plan entitles the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval.

G.S. 113A-61(c). The City should continue to render a review decision within 30-days from receiving a complete application but should start sending all official notices of disapproval with the ability to confirm receipt via Certified Mail or other means pursuant to G.S. 1A-1 Rule 4.

- While the City has developed a set of Standard Detail Drawings based on the Erosion and Sediment Control Planning and Design Manual allowing for consistency in the design and implementation of measures, staff have previously approved plans that were missing construction details. City staff should ensure that all measures proposed on the erosion and sediment plan include details for their construction. Staff should also ensure that information in the FRO form and the design calculations accurately reflect the conditions in the proposed plan.
- City staff should be checking for self-inspection records during site inspections. Self-inspections should be conducted for initial installation or modification of any erosion and sedimentation control devices and practices described in the approved plan as well as during or after each phase of the approved plan. G.S. 113A-54.1(e). and 15A NCAC 04B.0131. In addition to those required under the SPCA, weekly and rain-event self-inspections are required by federal regulations that are implemented through the NPDES Construction General Permit No. NCG010000.

Recommendations for Improvement:

DEMLR staff has also compiled a list of recommendations that would help to improve the program:

- The City stated that they were in the process of updating their local ordinance in accordance with the most recent Model Ordinance for Local Programs. Once the local ordinance is up to date, update all template letters and inspection reports to reflect the most current references to the North Carolina Administrative Code, General Statutes and City of Raleigh UDO. Template letters and inspection reports can be found on our Local Program Reporting SharePoint site.
- Monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment on site during inspections. Note possible NPDES violations and refer to the NCDEQ Raleigh Regional Office when necessary.

Conclusion:

During our review we found that the City of Raleigh locally delegated erosion and sedimentation control program had a few minor deficiencies. The City needs to adjust their plan review practices and procedures to address the inconsistencies in disturbed acreage, missing construction details and missing documentation of property ownership. The City also must start sending letters of disapproval with the ability to track when the applicant receives the letter, as the applicant has the right to appeal the decision if requested within 15 days. Self-inspection reports as required under the SPCA should be reviewed during site inspections. It should be noted that the area received almost half an inch of rain during the morning of our review. Although all three sites inspected were out of compliance on the day of our review, one site only had minor maintenance needs and was out of compliance for failing to obtain coverage under the NCG01 permit and thus failing to follow the construction sequence on the approved plan along with additional violations of the NCG01 permit. Local programs are not delegated the authority to enforce the NCG01 permit. We ask that the City provide guidance and monitor for these types of violations but refer them to the State when necessary for enforcement. City inspection staff

demonstrated their ability to conduct adequate inspections and noted all the areas of concern and violations seen by State staff. The City demonstrated an adequate understanding of the Enforcement and Civil Penalty process. The City is using NOVs, CPAs and other enforcement tools when necessary to ensure compliance with the SPCA and Local Ordinance. Overall, the City demonstrated their knowledge and ability to effectively implement the local program's delegated authority.

DEMLR staff recommends to "Continue Delegation" of the City of Raleigh Erosion and Sedimentation Control Program.

This report has been prepared based on the formal review of the City of Raleigh Erosion and Sedimentation Control Program conducted on March 24, 2022 and will be presented to the Sedimentation Control Commission (SCC) during its 2022 Q2 meeting on May 19, 2022.

Local Program Report to the SCC City of Rocky Mount Follow up, May 19, 2022

On February 22, 2022, a report was presented to the Sedimentation Commission (SCC) based on the formal review of the City of Rocky Mount's Erosion and Sediment Control Program conducted on November 23, 2021. The Commission voted to "Continue Delegation with review for 3 months" with a follow up report to be presented at the 2nd Quarterly SCC meeting of 2022. During the November 23rd review, the following issues and required actions that the program should implement to address said issues were noted:

Issues Noted:

- Plans are being reviewed and comments sent back to the designer when found to be inadequate; however, official notification of the plan review decision is not being given to the applicant within 30 days of receipt of new plans and 15 days for revised plans.
- A copy of the property deed is not being kept on file and a landowner/builder agreement is not being obtained when the landowner and financially responsible party (FRP) differ.
- Once a subdivision final plat has been recorded and the development has moved into the individual lot construction, or the homebuilding phase, the City is no longer monitoring for erosion and sedimentation control and is not conducting regular inspections.
- Certain sections within the local ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The City does not appear to have amended its local ordinance since 2013.
- One responsibility of a locally delegated Erosion and Sedimentation Control Program is to track and report the program's monthly activity numbers using the Local Program SharePoint Site. The previous year's numbers reported appear to be inaccurate or incomplete.

Required Actions:

- 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 15 days for a revised plan. G.S. 113A-61(b). Once a plan/application is found to be inadequate a letter of disapproval should be sent to the applicant. Letter of Disapproval templates can be found on the Local Program SharePoint site.
- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0118(c). A copy of the property deed should be obtained and kept in each project file.
- Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the erosion and sediment control plan must include the landowner's written consent for the applicant to submit a plan to conduct the land-disturbing activity. G.S. 113A-54.1(a). A letter of agreement or landowner/builder agreement should be obtained prior to approval of a plan when the landowner and FRP differ.
- The City should continue to monitor and enforce the provisions of the SPCA, NCAC and local ordinance on all projects until the site has been permanently stabilized and the

project can be closed out. Individual lot development still constitutes a land disturbing activity which should be monitored and regularly inspected.

- Local ordinances should reflect the law under G.S. 113A-50 through 65 and Chapter 04 of Title 15A of the NC Administrative Code (NCAC). The Sedimentation Control Commission (SCC) provides a Model Ordinance for all local programs which is available on the NC DEQ Erosion and Sedimentation Control website. Changes to your local ordinance which conform to the current Model Ordinance do not have to be brought back before the SCC for approval. Any substantive changes not reflected in the Model Ordinance will have to be approved by the SCC.
- The numbers which were reported on the SharePoint site through the 3rd Quarter of 2021 did not reflect the numbers reported during the formal review of the program. The definitions for each reporting category can be found on the SharePoint site. Monthly numbers should be reported for each calendar quarter following the end of said quarter and should accurately and completely represent the programs activity for each month.

Follow up:

During the 1st calendar quarter of 2022, the City reported that they have 3 staff member which contribute 1.5 full time equivalents. During this period the City conducted 5 reviews or re-reviews, issued 3 approvals and 3 disapprovals. The City also conducted 29 inspections and issued 1 NOV. The City is in the process of filling an open position which will add to the current 1.5 FTE. The City has begun the process of updating their local ordinance in accordance with the 2021 Model Ordinance. The City currently has 9 open projects. The following updates are based on our initial review and inspections conducted by the City throughout the continued review period.

1. Stonewall Villas – Phase II:

This project consists of 18.86 acres disturbed for residential development. On the day of our initial review active grading was occurring in one section while home building was active in the other. This site was out of compliance needing to maintain and repair measures during our initial review. Following our initial review, the City continued to regularly inspect this site and resumed monitoring the home building section of the project. The City found that all corrective actions noted during our initial review had been completed and this site was in compliance during its inspection conducted on 12/20/2021. The City continued to monitor and inspect this site during the continued review period. During its most recent inspection conducted on 3/17/2022, the City noted that temporary seeding was needed on areas which were not being worked per the specifications of the approved plan and found this site to be out of compliance. No offsite sediment has been noted by the City.

2. 7-Eleven:

This project consists of 1.83 acres disturbed for commercial use. On the day of our initial review, demolition of an existing house had been completed and grading had yet to begin. Perimeter silt fence had been installed and one inlet protection measure needed to be re-installed per the construction details in the approved plan. The City found this site to be in compliance during its next inspection on 12/22/2021. The City continued to monitor this site and found it in compliance during its most recent inspection conducted on 3/22/2022. No offsite sediment has been noted by the City.

3. Olde Mill Stream – Phase I:

This project consists of 18 acres disturbed for residential use. On the day of our initial review the City had not conducted an inspection of this site during the previous 4 months since the final subdivision plat had been recorded. At the time, individual home building was underway, and the surrounding areas needed to be restabilized as temporary groundcover had started to die off. The City found that all corrective actions had been made and the site was in compliance during its inspection on 1/4/2022. The City has continued to monitor this site as home building has progressed. This site was out of compliance needing to clean the rocks and sediment from the roads during the City's most recent inspection conducted on 3/22/2022. No sediment losses offsite were noted.

4. Flagmarsh Hills:

This project was not reviewed during the initial review. During the continued review period, the City found this site to be out of compliance during an inspection on 1/13/2022 for needing to repair damaged silt fence, clean sediment from the streets and maintain inlet protections. The City conducted a follow up inspection and found this site to be in compliance on 1/25/2022. The City noted that this site was out of compliance during inspections conducted on 2/22/2022 and 3/7/2022 and issued an NOV to this site on 3/9/2022. The NOV noted a 15-day deadline to complete corrective actions. A follow up inspection conducted on 3/21/2022 found this site in compliance and lifted the NOV, noting that silt fence and inlet protections had been maintained and repaired throughout the site and sediment lost into the street had been cleaned.

Conclusion:

During the continued review period, DEMLR staff received periodic updates and inspection reports from the City and have noted the improvements made by the program. The City is now requiring a copy of the property deed and a landowner consent letter when the FRP and landowner differ as part of a complete application package. Once a complete package is received, the City is reviewing and sending official notice of the review decision to the applicant within 30-days. The City is also offering the option for an applicant to go through preliminary reviews at no cost prior to submitting a complete package to facilitate a streamlined official review. It was discovered during our initial review that the City was not conducting inspections on projects or portions of projects once a final plat had been recorded. The City has adjusted their inspection procedure to ensure that inspections are conducted on all areas of a project until it is complete and closed out. The City stated that staff will conduct informal or partial inspections as they are on site daily for other duties and communicate maintenance needs or repairs they may note to the contractors on site. This promotes open and consistent communication between contractors and City staff and allows for a frequent presence on projects. A formal inspection is conducted on all sites at least once a month. The City has begun to track and report their monthly activity numbers accurately and completely. The City is in the process of filling a vacant position which will contribute additional time to the program and stated that they are in the process of updating the local ordinance pursuant to the 2021 Model Ordinance. During the continued review period the City has worked to address all deficiencies noted during our initial review and have demonstrated their ability to adequately implement their delegated program.

DEMLR staff recommends to “Continue Delegation” of the City of Rocky Mount Erosion and Sedimentation Control Program.

This report has been prepared based on the formal review conducted on November 23, 2021, and the following continued review period. This report will be presented to the Sedimentation Control Commission during its 2022 2nd quarterly meeting on May 19, 2022.

III. **Information Items**

- A. Local Program Review Recommendations – Ms. Julie Coco
- B. NCDOT Report – Ms. Julie Coco
- C. Commission Technical Committee – Mr. Mark Taylor
- D. Ad-Hoc Committee – Mr. Hartwell Carson
- E. Land Quality Section Active Sediment Cases and Enforcement – Ms. Julie Coco
- F. Education Program Status Report – Ms. Rebecca Coppa
- G. Sediment Program Status Report – Ms. Julie Coco
- H. Land Quality Section Report – Mr. Toby Vinson

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.

Active Sediment Case Report as of May 3, 2022

Case#	Violator (Name of Case)	County	Date of Assessment	Penalty Assessment Amt	Final Amt Paid	Comments
20-017	Tardiff Property	McDowell	N/A	N/A	N/A	Injunction issued 10/2 Consent Judgement issued 12/30/20
20-019	G&H Hauling, LLC	Brunswick	30-Oct-20	\$25,000.00		Under payment plan
20-022	Blue Ridge Mountain Sky, LLC	Polk	16-Dec-20	\$25,000.00		Settlement Agreement drafted 12/13/21
20-023	Blue Ridge Mountain Sky, LLC	Polk	N/A	N/A		Injunction filed 11/5/20 Consent Judgement signed 2/25/21 Motion to Show Cause signed 12/13/21
21-003	Southwest Cabarrus Elementary School	Cabarrus	22-Sep-21	\$69,130.00		Civil Penalty Remissions Committee to hear at August mtg
21-009	Northgate Golden Valley	Rutherford	21-Apr-22	\$25,000.00		Awaiting response from violator
21-014	Dump & Go, Inc.	Cumberland	03-Nov-21	\$5,000.00		Request for injunctive relief requested 3/22
21-015	Wachhund Land Co., LLC	Transylvania				SWO pending
21-016	H&H Constructors of Fayetteville, LLC	Brunswick				Assessment draft in review

N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT

by the OFFICE OF THE ATTORNEY GENERAL

5/4/2022

Status of Cases	8/2/2021	10/21/2021	2/8/2022	5/3/2022
1. LQS Drafting CPA	0	1	3	1
2. CPAs Out to Violator (30-day)	0	1	0	1
3. CPAs Prepared by LQS Under Review	2	1	4	2
4. CP Remission Requests Under Review	0	0	0	1
5. CP Remission Decisions	2	0	1	0
6. Cases Pending in OAH	1	1	2	2
7. Cases Awaiting Final Agency Decision	0	0	0	0
8. Cases Pending in General Courts of Justice				
a. Judicial Review	0	0	0	0
b. Injunctions	1	1	1	1
c. Pre-Judgement Collections	0	0	0	0
d. Post-Judgement Collections	0	0	0	0
e. Federal Cases	1	1	1	1
9. Cases in Bankruptcy Proceedings	0	0	0	0
10. *Cases where CPA Being Paid by Installment	0	0	0	0
11. Cases to be Closed	0	0	0	0
TOTALS:	7	6	12	9
Action Since Prior Quarterly Report:				
New Cases Received by AGO			1	1
Cases Closed by AGO			0	0

Education Program Status Report

Presentations/Exhibits

- Virtually visited 3rd grade classes of ~20 students at Dillard Drive Magnet Elementary on 2/17/22, 3/29/22, and 4/27/22 to discuss NC's ecoregions, water, and human impacts.
- Co-hosted a Project WET- Getting Little Feet WET virtual workshop for early educators with Lauren Daniel of DWR on 2/28/22. Shared what resources DEQ has available for teachers and students.
- Co-presented on Incorporating Data into Education and Outreach at the WRI Annual Conference on 3/24/22 with Lauren Daniel of DWR.
- Co-presented on incorporating stormwater education into classrooms at the 3/24/22 Kenan Fellows Workshop for educators with Lauren Daniel of DWR and shared what resources DEQ has available for teachers and students.
- Virtually visited with all of Chase Middle School's 6th grade students (~149 students) on 4/12/22 as part of the NC Science Festival's SciMatch Program. Presented on soil, erosion, and water pollution due to sedimentation and demonstrated a sediment jar.
- Assisted with the NC State Envirothon by writing the 'Current Environmental Issues' portion of the high school test and presenting the CEI overview to the NC Envirothon high school participants at the resources station training day on 4/29/22.
- Co-hosted a Project WET Guide virtual workshop for formal and non-formal educators with Lauren Daniel of DWR on 5/9&10/22. Shared what resources DEQ has available for teachers and students.
- Co-hosted a Project WET Facilitator virtual workshop for formal and non-formal educators with Lauren Daniel of DWR on 5/16&17/22. Shared what resources DEQ has available for teachers and students.
- Continued to co-host monthly Water Education Coffee Talks with DWR's water educator, Lauren Daniel, for formal and non-formal educators. The purpose of these coffee talks are to answer questions, showcase our education resources, facilitate networking, and discover/facilitate collaboration opportunities.

Workshops

The 2022 Local Program Workshop and Awards Program was held on April 19 & 20 at the Union County Agricultural Center, and was planned in coordination with the Water Resources Research Institute (WRI). The workshop focused on regulatory updates, research updates, local program audits, and plan review, inspection and enforcement topics. Received and reviewed nominations of four local programs. Durham County (large program) and Haywood County (small program) were chosen to receive the 2021 Awards for Excellence in E&SC. Approximately 80 people attended the in-person workshop both days and approximately 90 people attended the virtual workshop on day one and 80 on day two.

May 19, 2022

Contract Administration

The contract between DEMLR and WRRI for the 2022 Local Program Workshop and Awards Program has been completed and contract planning for the 2023 Local Program Workshop and Awards Program will begin this summer.

Updates

The E&SC website pages are continuously being updated as needed.

If you would like to contribute an article or suggest a topic for the June edition of the Sediments Newsletter email the Sediment Education Specialist.

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2021-2022 through:

April

Activity	WIRO	WIRO	ARO	ARO	WARO	WARO	WSRO	WSRO	RRO	RRO	FRO	FRO	MRO	MRO	TOTALS
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	
C. Letters of Deficiency	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
D. Cases Referred for Enforcement	0	0	0	0	0	2	0	0	0	0	0	1	0	0	3
3. Dam Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Letters of Deficiency	0	0	2	27	0	0	2	2	0	2	1	23	0	2	56
B. Enforcement Requests	0	0	0	0	0	0	0	0	2	2	0	0	0	0	2
4. Stormwater	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Notices of Violation (Total)	0	23	5	10	1	2	0	1	5	22	1	3	0	5	66
B. Notices of Deficiency (Total)	0	6	0	0	0	0	0	3	0	4	1	5	0	1	19
C. NOVs to Repeat Violators	0	2	0	1	1	1	0	2	0	1	0	1	0	0	8
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LOCAL PROGRAMS															
1. Local Ordinance Reviews	0	0	0	1	0	2	1	6	0	14	0	0	0	0	23
2. Local Programs Aided (hours)	0	0	0	53	0	0	10	45	7	86	0	0	43	167	351
DREDGE & FILL APPLICATIONS	15	86	0	0	9	73	1	2	0	0	0	0	8	75	236
CUSTOMER SERVICE															
Technical Assistance (Aided Hours)	295	2826	125	1661	187	1886	2	714	44	410	34	516	65	813	8826.07
Pre-Application Meetings	98	1011	0	42	21	207	0	48	0	6	7	139	11	110	1563

Land Quality Section Report – May 19, 2022

DEMLR Vacancies

Location	Position Description
Raleigh - Archdale	Engineer III
Raleigh - Archdale	Engineer III TL
Raleigh - Archdale	Engineer I
Raleigh - Archdale	Engineer II
Raleigh - Archdale	Engineer III TL
Raleigh - Archdale	Engineer I
Raleigh - Archdale	Environmental Program Consultant
Raleigh - Archdale	Environmental Specialist II
Raleigh - Archdale	Environmental Program Consultant - TL