

Local Program Report to the SCC Town of Clayton, August 1, 2023

On July 6, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Clayton Erosion and Sedimentation Control Program. The Town of Clayton program was initially delegated in November of 2020. The Town requires an erosion and sediment control plan for all projects disturbing 1.0 acres and greater. Jurisdiction of the program covers the Town of Clayton's corporate limits and extraterritorial jurisdiction (ETJ). All areas within the Town's jurisdiction are within the Upper Neuse Subbasin of the Neuse River Basin. The program currently consists of multiple staff who contribute approximately 2 full time equivalents (FTE). Over the past year, the Town has also contracted a consulting engineer to assist with plan reviews. The consultant is not included in the FTE count. Town staff stated that a Stormwater Engineer and field staff position were currently vacant. The field staff position has been filled with an anticipated start date of July 31, and the Stormwater Engineer position has been advertised. The Stormwater Engineer will be split between duties related to the Stormwater Program and the Erosion and Sedimentation Control Program. Once fully staffed, the Town is anticipating approximately 2-2.5 FTE contributing to the ESC program. During the previous year from June 2022 through May 2023, the Town conducted 128 plan reviews or re-reviews, issued 27 approvals and 101 disapprovals. The Town currently reviews a plan once received and sends review comments to the applicant when plans are found to be inadequate. No official plan review decision is issued in this case. When review comments are sent back to an applicant, the Town counts this as a disapproval for the purposes of reporting. During this same period the Town conducted 594 inspections, issued 25 NOVs and 3 Civil Penalty Assessments. The Town has the ability to issue a Stop Work Order (SWO) and place a hold on various building inspections as additional tools to bring sites into compliance. The Town has issued 1 SWO and placed a hold on building inspections once in the past year. At the time of our review the Town had 59 active projects. During our review of the program, we looked at three project files and conducted site inspections on those projects.

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

1. Clayton Industrial Expansion:

This project consists of 22.5 acres disturbed for industrial development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports, the FRO form, and a letter of landowner consent. The disturbed acreage listed on the FRO form did not match the disturbed acreage shown on the approved plan. The Town received the complete application on 1/10/2022 and underwent 2 review cycles before issuing the approval letter on 3/16/2022. Once a complete application is received, the plans are reviewed, and the plans are either approved or review comments are sent back to the applicant, ending the review cycle. Through the current process, official plan disapprovals are not being sent when plans are found to be inadequate and the statutory timeframes for plan reviews are not always being met. The approved plan appeared to be adequate. Construction on this project began in April of 2022 and the Town had conducted 22 inspections prior to our review. The Town

issued an NOV to this project on 6/20/2023 for failure to establish adequate groundcover. The deadline for compliance with this NOV was 7/7/2023. During our review, completed areas had been stabilized with matting, sod or seed and straw mulch. The skimmer basin was being converted into the permanent stormwater control measure (SCM). The basin was being dewatered by pumping through a silt bag. A floating intake for the pump was not being utilized and the pump hose had a small hole which was allowing water being pumped to bypass the silt bag. The silt bag was placed adjacent to the basin outlet and riprap dissipator pad. The silt fence and silt fence outlet at this location was damaged and a significant amount of sediment was accumulating beyond the limits of disturbance and appeared to be encroaching into the wetlands area and stream buffer. No sediment appeared to be deposited into the stream. Silt fence and silt fence outlets throughout the site needed to be repaired and maintained. Sediment was also noted beyond one silt fence outlet above the existing SCM of the property adjacent to the project site. The Town noted that corrective actions from the NOV issued on 6/20/2023 had been completed. Following our review, State staff recommended the Town issue a new NOV for the sediment loss discovered. The Town issued an NOV on 7/7/2023. Town staff conducted a follow up inspection on 7/13/2023 and noted that the offsite sediment had been cleaned up and the area mulched with straw. Silt fence repairs surrounding the existing SCM of the adjacent property had yet to be completed.

2. Champion West:

This project consists of 2.49 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed previous inspection reports and the FRO form. The Town received the complete application on 2/5/2021 and underwent 3 review cycles before issuing the approval letter on 4/18/2021. The skimmer and skimmer orifice size were not shown on the plans and the specifications and schedule for temporary seeding were not included. The Town had received an updated FRO form when ownership of the project was sold to a new entity, however, the acreage on the new FRO form did not match the disturbed acreage shown on the plan and the form had not been notarized. Construction on this project began in October of 2021 and the Town had conducted 31 inspections prior to our review. The Town issued a NOV to this site on 5/8/2023 noting areas of silt fence needing repairs and sediment on the internal and external roadways. This NOV was lifted following an inspection conducted on 6/1/2023 when staff noted that the streets had been cleaned and repairs to the silt fence had been completed.

During our review, construction on the townhomes was underway. Silt sacks and wattles had been installed to protect curb inlets; however, some wattles had been placed across the inlet opening and did not surround the inlet grates allowing water to bypass the wattle. Silt fence along the back of the site needed to be maintained and a small amount of sediment was noted just beyond the fence in a few locations. No sediment beyond the silt fence appeared to be beyond the limits of disturbance but would need to be removed and placed back within the perimeter measures or disposed of appropriately. Completed lots had been sodded and landscaping was being installed. Gravel entrances had been installed on the remaining lots. Overall, this site was out of compliance for needing to repair the silt fence and maintain measures to prevent the potential for offsite sedimentation during future rain events. No signs of offsite sedimentation were noted.

3. Johnston Health Medical Office:

This project consists of 5.7 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. An early grading plan was initially received and approved by the Town for this project. An early grading plan will only show the initial grading phase and must provide plans for permanent stabilization. Early grading plans must be followed, and permanent stabilization must be established unless the applicant submits and receives approval for a new plan with the infrastructure and construction phases. Staff stated that an early grading plan must meet all of the same erosion and sediment control requirements as a regular plan and is reviewed through the same process. The Town received the initial complete early grading application on 9/2/2022 and underwent 3 review cycles before issuing the approval letter on 11/10/2022. A complete application for the remaining phases was received on 9/23/2022 and underwent 2 review cycles before being approved on 1/6/2023. The skimmer size shown on the plan was larger than the size shown within the design calculations. State staff recommended ensuring that the orifice size specified in the design calculations was installed in the field. Construction on this project began in November of 2022 and the Town had conducted 16 inspections prior to our review. No NOVs or CPAs had been issued to this project.

During our review, vertical construction was underway, and the stormwater infrastructure and new roadway had been completed. The diversion ditch along the front of the site was eroding and needed to be stabilized. One check dam had been installed but evidence of end cutting around the rock check was noted. Check dams along the remainder of the diversion ditch had not been installed per the approved plan. One skimmer basin had been removed while the other two remained in place. Stockpiles had been placed directly adjacent to one skimmer basin. Both basins appeared to be functioning; however, baffles needed to be extended and tied into the basin sides. Wattles, which had been placed on curb inlets after the road had been paved, and other drop inlet protection measures needed to be maintained. Diversion ditches throughout the site needed to be maintained and stabilized. Overall, this site was out of compliance. No signs of offsite sedimentation were noted.

Positive Findings:

During the review DEMLR Staff noted positive aspects about the Town of Clayton Local Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all projects. Staff stated that proof of coverage under the NCG01 permit is required prior to a preconstruction meeting being scheduled. Staff also stated that they typically will hold an “in-office” preconstruction meeting with all town departments and parties involved as well as an on-site meeting.
- The Town can issue a stop work order and place a hold on building or infrastructure inspections or permits as additional tools to bring sites back into compliance.

Issues Noted and Required Actions:

During the review DEMLR Staff found that the Town of Clayton Erosion and Sedimentation Control Program had deficiencies including:

- Not all approved plans appeared adequate. Temporary seeding specifications and a seeding schedule were not included on one plan. The Skimmer devices size was not specified on one plan and the ones shown on another plan did not reflect the size shown within the design calculations.
- Disturbed acreage listed on the FRO form did not always match the approved disturbed acreage on the plans. One FRO form that had been updated when ownership changed was not notarized.
- Once a complete application is received, plans are reviewed, and either approved or review comments are sent back to the applicant. Staff stated that they currently review new plans within 30 working days and revised plans within 15 working days. When plans are found to be inadequate, comments are sent back to the applicant, but no official disapproval is sent. Plans are not always being reviewed and an official review decision sent within the statutory timeframes.
- Language stating the violators' option to request remission and the attached waiver of the right to a contested case hearing was not included in the civil penalty assessment letter.

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

- The Town should ensure that both permanent and temporary seeding specifications are included within the plans prior to approval. Staff should also verify that the size of measures are reflected in the supporting design calculations. It is also recommended that both the skimmer and orifice size are depicted in the plan drawings and not only shown in the calculations table, even if the table is included in the plan set.
- 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 calendar days of receipt of a new plan and within 15 calendar days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the official review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). When a plan is found to be inadequate, notice of the plan disapproval should be sent. These notices should be sent with the ability to track when the applicant has received the notice.
- Erosion and sedimentation control plans shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. 15A NCAC 04B.0118. Staff should ensure that the disturbed acreage shown on the proposed plan matches that on the FRO form and that all FRO forms are notarized.
- A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which

the assessment was based. G.S. 113A-64.2. The authority to receive, consider and resolve remission requests for civil penalties has been delegated to Local Programs by the Sedimentation Control Commission (SCC). If the local government and violator are unable to resolve the remission request, the request should be referred to the Civil Penalty Remissions Committee for a final agency decision. The Town should include language notifying a violator of their option to request remission and should include the appropriate waiver of the right to a contested case hearing form in all civil penalty assessment letters. A template for a civil penalty assessment letter, the waiver of the right to a contested hearing form, the Remission Authority Delegation from the SCC, and the adopted Remission Guidelines for Local Programs can be found on the [Local Programs Reporting SharePoint site](#).

Recommendations for Improvement:

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

- Certain sections within the Town's ordinances have been updated pursuant to the 2020 Model Ordinance; however, some updates from the 2021 Model Ordinance have not been made such as sections which refer to the timeframe a remission request must be made within and self-inspection requirements. It is recommended to review the local ordinance to ensure that the most recent state statutes and administrative codes are reflected and to update all template letters to reflect any changes.
- The Town has moved to an electronic permitting system and digital plan sets are reviewed through this system. This system allows for comments or markups to be directly added to the plans. This allows for comprehensive and detailed comments to be sent back to the applicant. The construction details on two plans were drawn at a scale that was difficult to read when printed as a full-size plan set. When reviewing plans, it is recommended that staff check the size and scale of all parts of a plan set and ensure notes are drawn at a scale that is easily readable.
- The Town requires that coverage under the NCG01 permit is obtained prior to scheduling a preconstruction meeting. Staff have also coordinated with State staff when significant violations of the NCG01 permit have been noted. It is recommended that the Town continue to monitor and provide guidance for NPDES violations including operating without a permit, improper or incomplete self-inspection records and improper concrete washouts. Note possible violations and refer to the NCDEQ Raleigh Regional Office when necessary.

Conclusion:

During our review we found that the Town of Clayton locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust the plan review process. Plans should be reviewed, and the review decision sent to the applicant within the appropriate statutory timeframes. The Town has been conducting plan reviews within 30 working days and should ensure that moving forward, plans are conducted within 30 calendar days and 15 calendar days for revised plans. Town staff will need to ensure that all necessary details are included on plans prior to approval, including seeding specifications. Staff should also

ensure that the designs proposed in the plan drawings reflect the design calculations. The Town has the ability to issue stop work orders and place holds on various other inspections. Staff state that they will utilize these additional tools to bring sites into compliance. Staff demonstrated an understanding of the plan review, inspection, and enforcement procedures; however, will need to adjust procedures to ensure that all statutory requirements are being met. The Town has been utilizing an engineering consultant to assist with plan reviews over the past year while the Town's Stormwater Engineer position has been vacant. Staff stated that the current field staff conducting inspections would soon be transitioning to a new role within the Town. The Stormwater Engineer and field staff positions are the primary staff responsible for administering the erosion and sedimentation control program. The Town indicated that the Stormwater Engineer position has been advertised and that the field staff position has been filled with an anticipated start date at the end of July. Additional oversight regarding onsite inspections and plan reviews while existing staff transition to a new role and new staff are hired and trained will benefit the program and ensure that the expectations and responsibilities of their delegated authority can be met. DEMLR staff recommends to "Continue Delegation with Review" of the Town of Clayton locally delegated program with a follow up report to be presented during the 2024 Q1 meeting.

This report has been prepared based on the formal review of the Town of Clayton Erosion and Sedimentation Control Program conducted on July 6, 2023, and will be presented to the Sedimentation Control Commission during the 2023 Q3 meeting on August 1, 2023.