

The North Carolina

Sedimentation

erosion control program



Responsibilities of Local Erosion & Sedimentation Control Programs

Local governments (a.k.a. “Local Programs”) with authority delegated to them by the Sedimentation Control Commission for administering and enforcing the state Sedimentation Pollution Control Act of 1973 (“Sediment Act”) must adhere to the mandatory standards and other provisions of this law, including its exemptions and exclusions of power. Below are some common responsibilities under which Local Programs are expected to adhere to satisfy this state law and effectively manage their programs.

PLAN REVIEWS

1. **Plans are to be reviewed and a decision rendered to the applicant within 30 calendar days of receipt of a complete plan.** Unlike with other permits, there is no pausing this “review clock”. A complete plan is defined as follows:
 - a. An erosion and sediment control plan
 - b. Calculations in support of the design, if applicable
 - c. An authorized statement of financial responsibility
 - d. A letter of consent or permission letter from the landowner for the land-disturbance, if the landowner and the Financially Responsible Person/Party are not the same entity
 - e. Documentation of property ownership (e.g., deed)
 - f. Fees paid in full
2. **Plans are to be reviewed and a decision rendered to the applicant within 15 calendar days of receipt of a revised plan.** There is no pausing this “review clock” once it has started.

Reference: G.S. 113A-61(b)

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3. **Local Programs must require homebuilders to apply for an erosion and sediment control plan approval once their cumulative land-disturbance in a subdivision is planned to exceed one acre (or the Local Program's threshold for requiring a plan, whichever is less*).**

Each homebuilder within a subdivision must have their own erosion and sediment control plan once their land disturbance exceeds or is reasonably expected to exceed one (1) acre within the subdivision. This is a per subdivision requirement, and not a per lot requirement. This is regardless of whether those lots are contiguous. The Sediment Act refers to the land-disturbing activity as that occurring on a tract of land. By definition, a "Tract" means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. Thus, the subdivision is the Tract of land which is to be permitted. Individual lots are not tracts if they are within a subdivision.

*Local Programs can require a plan when this exceedance equals something less than one acre.

Reference: G.S. 113A-52 & 113A-57(4)

4. **Local Programs are not to accept erosion control plans from publicly-funded projects**
Local Programs are excluded from administering the Sediment Act (i.e., reviewing and monitoring projects) on the following types of land-disturbing activities:
 - a. Those conducted by the state of North Carolina (e.g., NCDOT, public schools)
 - b. Those conducted by the federal government (e.g., DOD)
 - c. Those conducted by themselves or another Local Program (e.g., public schools)
 - d. Those conducted by parties having the power of eminent domain (e.g., pipelines, railroads, public works projects)
 - e. Those conducted for oil and gas exploration and development on a well pad site

Broadly stated, this exclusion would apply to all publicly-funded projects, whether funded in whole or in part.

Reference: G.S. 113A-56(a) and MOA Part II.D.

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- 5. Local Programs shall only approve a plan upon determining that it complies with all applicable state and local regulations for erosion and sediment control.**

Projects that call for work within a jurisdictional waterbody or a riparian buffer may require a USACE 404 permit or a 401 Water Quality Certification from DEQ's Division of Water Resources (DWR). These permits or certifications should be sought when reviewing plans. These waterbodies and buffers should be clearly delineated on the plans, and the terms of the permit or certification should be considered when reviewing the plans. Because these permits and certifications may take longer than 30 days to be issued, Local Programs shall condition approval of plans upon compliance with these permits and certifications or with any federal or state water quality laws or rules. A Local Program shall disapprove an erosion and sediment control plan if implementation of the plan would result in a violation of the riparian buffer rules.

Reference: G.S. 113A-61(b) & (b1)

- 6. Waivers must be sought for desired land disturbances greater than 20 acres when in a High Quality Water Zone**

Projects located within sensitive watersheds known as High Quality Waters (HQW), have more restrictive design standards. Uncovered areas involved with the land-disturbing activity inside HQW zones shall be limited to 20 acres within the boundaries of the tract. Larger areas may be uncovered within the boundaries of the tract with written approval of the DEQ-DEMLR Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, a more conservative design than the 25-year storm, and other site-specific conditions as stipulated by the Director. The plans may have to be disapproved in the interim, if larger areas have been submitted for approval within the 15 or 30 day review period with no waiver granted.

Reference: 15A NCAC 04B .0124

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SITE MONITORING & COMPLIANCE

7. Local Programs are to review documents provided on the project site.

Before construction begins, certificates or letters of plan approvals shall be posted at the primary entrance of the job site or other location that is observable to the public or inspectors. Local Program staff are to verify these postings with each visit.

Contractors, developers, homebuilders, financially responsible parties, or their consultants are to conduct their own inspections after each phase of the plan (and weekly or within 24 hours of a precipitation event equal to or greater than 1 inch for projects covered under the NPDES NCG01 permit). The name, address, organization affiliation, telephone number, signature of the person conducting the inspection, and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. If documentation of inspections occurs on a copy of the approved erosion and sedimentation control plan, then that plan shall be kept onsite. (NPDES inspection reports must be made available during normal business hours.) Local Program staff are to review self-inspection/self-monitoring records and ensure that inspections are being conducted, properly documented, and are accessible.

Reference: 15A NCAC 04B .0127 & .0131

8. Notices of Violation to first-time violators must be hand-delivered.

In addition, the Local Program shall offer assistance in developing corrective measures. This assistance may be provided by referral to a technical assistance program, to a cooperative extension program, or by providing written materials such as guidance documents. If delivery of the NOV is unable to be conducted in-person within 15 days following discovery of the violation, the notice may be served according to G.S. 1A-1, Rule 4 for service of process, and shall include information on how to obtain assistance in developing corrective measures.

Reference: G.S. 113A-61.1(c)

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ADMINISTRATION

9. Local Programs are to report on their activities

Local Programs are to provide monthly activity reports to the DEQ, Division of Energy, Mineral & Land Resources (DEMLR), Land Quality Section on behalf of the Sedimentation Control Commission.

Reference: MOA Part III.B.1.

10. Local Programs are to notify the DEQ regional office of issuance of NOVs

Local Programs are to notify the appropriate DEQ regional office of issuance of Notices of Violation at the time the violator is notified.

Reference: MOA Part III.B.2.

11. Local Programs are to maintain current contact information on file with the Land Quality Section.

Local Programs are to notify the State Sedimentation Program Specialist or their assistant of at least one Program administrator. The name, address, phone number, and email address for a main contact is to be kept current with the state program. A list of all local program administrators will be maintained on the DEQ website.

Reference: MOA Part III.B.3.