



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

October 1, 2016

MEMORANDUM

To: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Jimmy Dixon, Co-Chair
The Honorable Chuck McGrady, Co-Chair
The Honorable Trudy Wade, Co-Chair

From: Mollie Young
Director, Legislative and Intergovernmental Affairs

Subject: Annual Sedimentation Control Program Report

Pursuant to G. S. 113A-67, the Department shall report to the Environmental Review Commission on the implementation of this Article on or before 1 October of each year. The Department shall include in the report an analysis of how the implementation of the Sedimentation Pollution Control Act of 1973 is affecting activities that contribute to the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include a review of the effectiveness of local erosion and sedimentation control programs.

If you have any questions or need additional information, please contact me by phone at 919-707-8618 or by email at mollie.young@ncdenr.gov.

CC: Tom Reeder, Assistant Secretary for Environment, NCDEQ
Don Van der Vaart, Secretary, NCDEQ
Tracy Davis, Director of Energy, Mineral, and Land Resources, NCDEQ
William Childs, Fiscal Research, NCGA
Jeff Hudson, ERC Council, NCGA
Caroline Daly, Policy Analyst, Office of the Governor

**Report to the Environmental Review Commission
On the Implementation of the
Sedimentation Pollution Control Act of 1973
By the Department of Environmental Quality
Division of Energy, Mineral, and Land Resources**

October 1, 2016

Executive Summary

The Department shall report to the Environmental Review Commission on the implementation of the Sedimentation Pollution Control Act (SPCA) of 1973 on or before 1 October of each year. The Division of Energy, Mineral, and Land Resources is responsible for implementing the SPCA. There are also 53 delegated SPCA programs across the state implemented by either county or municipal governments. The total number of new projects decreased slightly from 2,109 in FY 2014-15 to 2,071 in FY 2015-16, and the total number of newly disturbed acres increased from 22,100 acres in FY 2014-15 to approximately 26,800 acres in FY 2015-16. Sediment inspections dropped slightly from 13,920 inspections in FY 2014-15 to 12,120 inspections in FY 2015-16.

Background

“The sedimentation of streams, lakes and other waters of this State constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters, principally from construction sites and road maintenance. The continued development of this State will result in an intensification of pollution through sedimentation unless timely and appropriate action is taken. Control of erosion and sedimentation is deemed vital to the public interest and necessary to the public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose”.

-Preamble to the Sedimentation Pollution Control Act of 1973

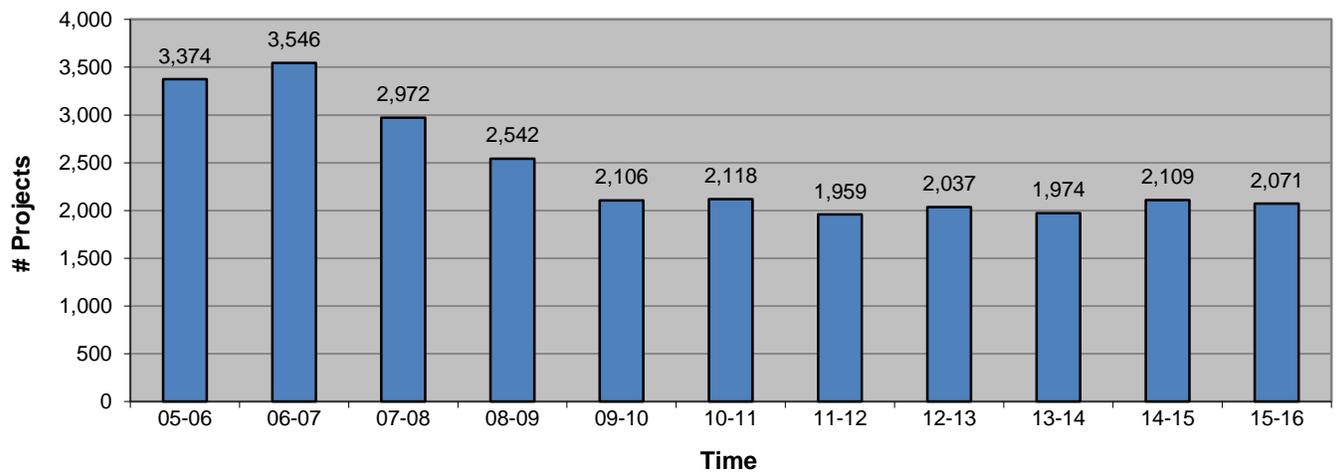
The Division of Energy, Mineral, and Land Resources (DEMLR) in the Department of Environmental Quality (DEQ) administers the SPCA on behalf of the Sedimentation Control Commission (SCC). The SCC has also delegated administration of the SPCA to 53 county and municipal governments. These local program delegations do not regulate land-disturbing activities conducted by local, State or United States government or persons with the power of eminent domain (e.g. public utilities), which remain under jurisdiction of the DEMLR.

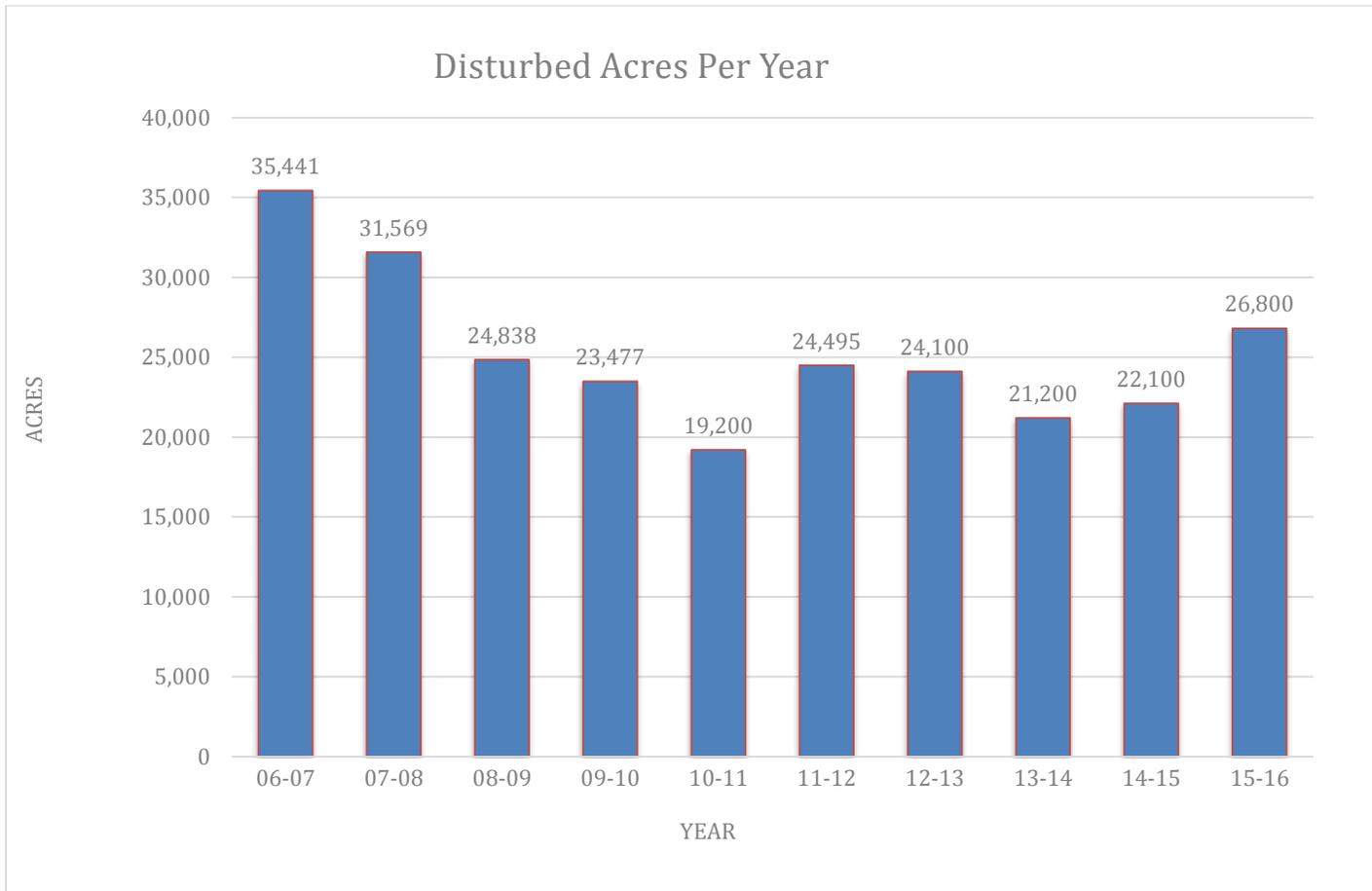
The state sedimentation program also plays a critical role in meeting federal construction stormwater permitting requirements under the Clean Water Act. The United States Environmental Protection Agency (EPA) implements federal permitting requirements for stormwater discharges from active construction sites, but also has the authority to delegate those permitting responsibilities to the states. North Carolina has delegated authority that allows DEQ - rather than EPA - to issue federal construction stormwater permits in the state.

Implementation

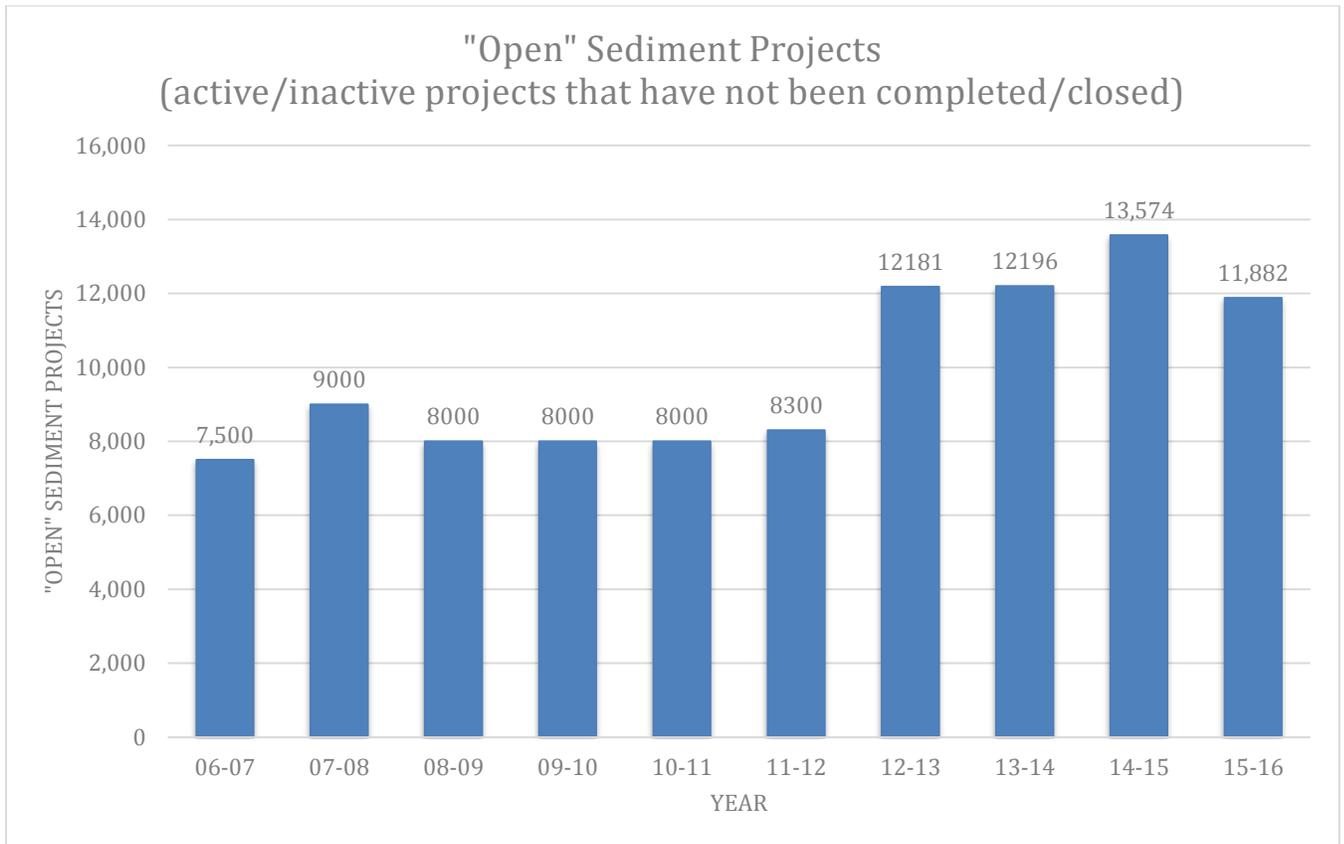
The decline in the number of new projects under state jurisdiction has leveled off in recent years with new projects count of 2,071 for FY 2015-16. Although the number of projects is slightly down this year, the actual area of land-disturbance covered by new erosion and sedimentation control plans approved in 2015-16 increased to approximately 26,800 acres. These totals do not include erosion and sedimentation control plans approved by local government sedimentation programs or land disturbed by the Department of Transportation under its delegated program.

Newly Permitted Sites Per Year





The number of open sediment projects requiring inspection by the state program is estimated at 11,882 projects. The total includes all sites that are either under active construction or are inactive and not completed. While the economic downturn that occurred between 2007 and 2011 slowed new project commencement and contributed to the consistently high inventory of incomplete projects due to slowdown in project construction or abandonment of projects as a result of foreclosures and bankruptcies, the DEMLR has observed reactivation and redevelopment of some of these older projects under new ownership.



The number of full time equivalent positions (FTE) in the DEMLR for the erosion and sedimentation control program has declined over the past eight fiscal years as follows:

Fiscal Year	Sediment FTE
2008-2009	65
2009-2010	61
2010-2011	52
2011-2012	44
2012-2013	40
2013-2014	40
2014-2015	39.6
2015-2016	36.95

Since the fee revenue for the program comes from a sedimentation plan review fee for new projects, a downturn in new construction and reduced acreage significantly affects staffing levels. The reduction in new project acreages, and therefore fee revenue, does not mean a reduction in total workload because of the large number of open project sites that the staff is responsible for inspecting for compliance with the plan requirements, statutes and rules until they are permanently stabilized. Although, there was an increase in receipt revenue

during FY 15-16, this was used to offset appropriated cuts as well as a significant increase in unexpected Information Technology expenditures.

Regional activities for the 2015-16 fiscal year include:

- 2,071 new erosion and sedimentation control plan reviews
- 627 revised erosion and sedimentation control plan reviews
- 12,120 sedimentation site inspections
- 184 notices of violation
- 19 enforcement case referrals

Plan Approval

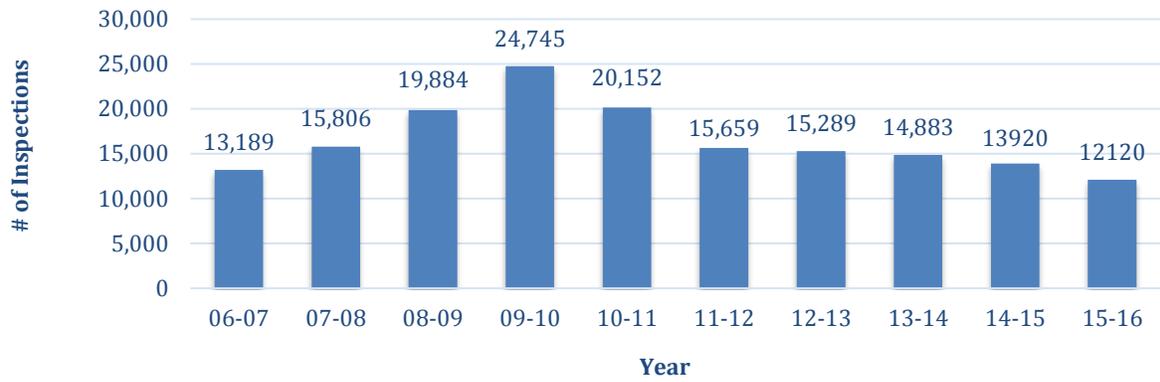
The SPCA requires review of a proposed erosion and sedimentation control plan within 30 days for a new plan submittal and within 15 days for a revised plan. As mentioned above, newly disturbed acreage in North Carolina increased last fiscal year. The number of new erosion and sedimentation control plans received was 2,071 (down slightly from 2,109 in FY 2014-15). For the past several years, the total number of new projects has fluctuated slightly but consistently remained around 2,000 plans. In addition, the Division encourages applicants to meet with permit review staff in advance of the initial plan submittal to resolve quality and completeness issues prior to formal submittal in an effort to reduce the overall time for plan review and approval.

The Express Permitting Program for erosion and sedimentation control plans provides for plan review within as little as three working days. During FY 2015-16, 773 Express Permit reviews were conducted. This represents an increase of approximately 12.5% from the 686 express reviews completed in the previous year. The Fayetteville and Mooresville regions had the most express reviews, reflecting the increase in Department of Defense projects and urban area development submitted for express review at Fort Bragg and in the Charlotte areas.

Inspections

Regional staff conducted 12,120 inspections last year, a decrease of 1,800 inspections from the previous year. These regulatory inspections document field observations and compliance or non-compliance with the SPCA. Based upon current staffing levels, open erosion and sedimentation control projects are inspected, on average, once every 12 to 14 months.

Inspections



Erosion and sedimentation in roadside ditch

Breached sediment controls leading to offsite sedimentation



Stream impacts from sedimentation

Enforcement

The Division of Energy, Mineral, and Land Resources documents compliance or non-compliance with the SPCA through sedimentation inspection reports. Most violations are resolved by providing an inspection report to the responsible party and requesting correction of the deficiencies. Of the 12,120 inspections conducted during FY 2015-16, 184 (1.5%) resulted in a Notice of Violation (NOV). The NOVs led to 19 requests from the regional offices for additional enforcement action (10.3% of NOVs issued or less than 0.15% of the inspections conducted). Nineteen civil penalties were assessed.

The Attorney General's Office continues to work in state courts and federal bankruptcy court with our technical support to resolve outstanding soil erosion and stream sedimentation cases at ongoing and abandoned development projects resulting from bankruptcy and foreclosure.

New Program Efforts

The Department of Information Technology has determined that the DEMLR Sedimentation Program's current project database tracking system will be reverting back to the existing IBEAM data management system by December 2017 due to technical and funding issues with the Program's pilot database system. As background, the Program was one of three statewide programs to be selected to pilot the AMANDA based Enterprise Certification Licensing Inspection and Permitting System (ECLIPS). ECLIPS was selected to facilitate electronic permitting and to provide the public the ability to track plans, inspections, and enforcement.

Local Programs

The SCC encourages local governments to administer a delegated erosion and sedimentation control program by providing a model ordinance and technical assistance. Once a program is delegated to a local government, the DEMLR provides periodic oversight to ensure that the local programs are meeting the standards for the state program. DEMLR personnel informally assist and advise the local staff on problematic sites. A formal review of each local program is scheduled at least every two years. The DEMLR and the Attorney General's Office review the city or county ordinance to ensure that it is as stringent as state law and rules. The DEMLR regional engineer and sediment program manager and/or their assistants meet with the local program staff during each formal review. A detailed report is provided back to the local government, noting strengths, deficiencies and corrective actions. A summary report is presented to the SCC at its quarterly meetings. The SCC then takes action to continue the delegation, place the program on probation, or give a 30-day notice that the SCC and DEMLR will assume administration and enforcement of the program.

Six formal local program reviews were conducted during FY 2015-16 along with review of the NC DOT delegated program. The regional offices also conducted 15 informal reviews

with local programs last year and provided 682 hours of technical assistance to promote consistent statewide implementation of the SPCA.

Training

The DEMLR staff hosted a Local Program Consistency Workshop this past year for 130 local program staff members representing the 53 delegated local erosion and sedimentation control programs across the state. In addition, those delegations that were placed on probation in FY 2015-16 are being provided with additional training via the “Erosion and Sediment Control for Construction Sites” webinar in FY2016-17 that will cover plan review and erosion and sedimentation control measure effectiveness. DEMLR staff also participated in the International Erosion Control Association (IECA) Conference in 2016 to receive training on current topics in the erosion and sediment control field. DEMLR, NCSU, and the Southeast Chapter of IECA are partnering beginning in FY2016-17 to provide workshops in the fields of Erosion and Sediment Control and Stormwater Management for design professionals. Some DEMLR staff received additional Stormwater training through a 1.5-day course provided by NCSU, while others received NCDOT Level II and III training and certification at the end of the fiscal year.