

Report to the Environmental Review Commission
On the Implementation of the
Sedimentation Pollution Control Act
By the Department of Environment and Natural Resources
Division of Land Resources, Land Quality Section

October 1, 2009

§ 113A-67. Annual report. 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.

The following information is submitted to fulfill this reporting requirement.

Executive Summary

This reporting period has presented a number of challenges to the administration of the State Sedimentation Control Program, mostly related to the slow economy. The number of new projects approved this past fiscal year decreased for a second year. However, the total number of projects still active and requiring inspections did not similarly decline because construction has slowed or stalled on many projects before final stabilization. The State Sedimentation Control Program is funded approximately **75%** by receipts. As a result of the severe economic downturn and the sharp reduction in receipts, the program was forced to eliminate three positions this year and leave four additional positions vacant.

The Sedimentation Pollution Control Act was also subject to statutory amendments and legal interpretation this year. Existing procedures for appealing the assessment of a civil penalty assessed by a local government have been the subject of legal dispute. Determining if a land disturbing activity was for development or for forestry was also the subject of legal interpretation this year. Development on steep slopes in the mountains continues to cause problems in erosion and sedimentation control and long term problems of slope stability.

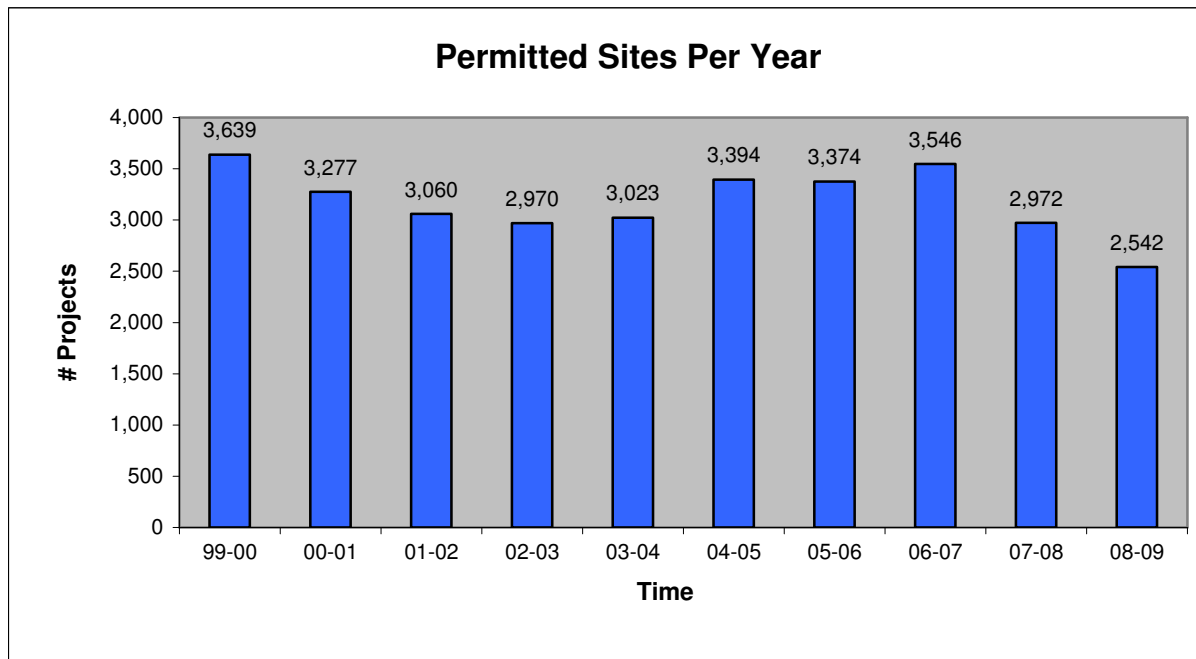
The economic situation has resulted in many disturbed tracts of land being abandoned without completion of development. Soil erosion and sedimentation damage from these bankrupt, foreclosed or abandoned developments is a serious problem. The Department is working with lending institutions that receive these properties to take remedial actions. However, there are a number of sites that have been completely abandoned with no responsible party to take remedial action. Several local governments with delegated erosion and sedimentation control programs have been able to stabilize abandoned sites because they require reclamation bonds or securities. On a positive note, staff turnover that previously had been a chronic problem was not a problem this year. The increase in the number of sedimentation inspections is a result of not having to spend as much program time recruiting and training new personnel.

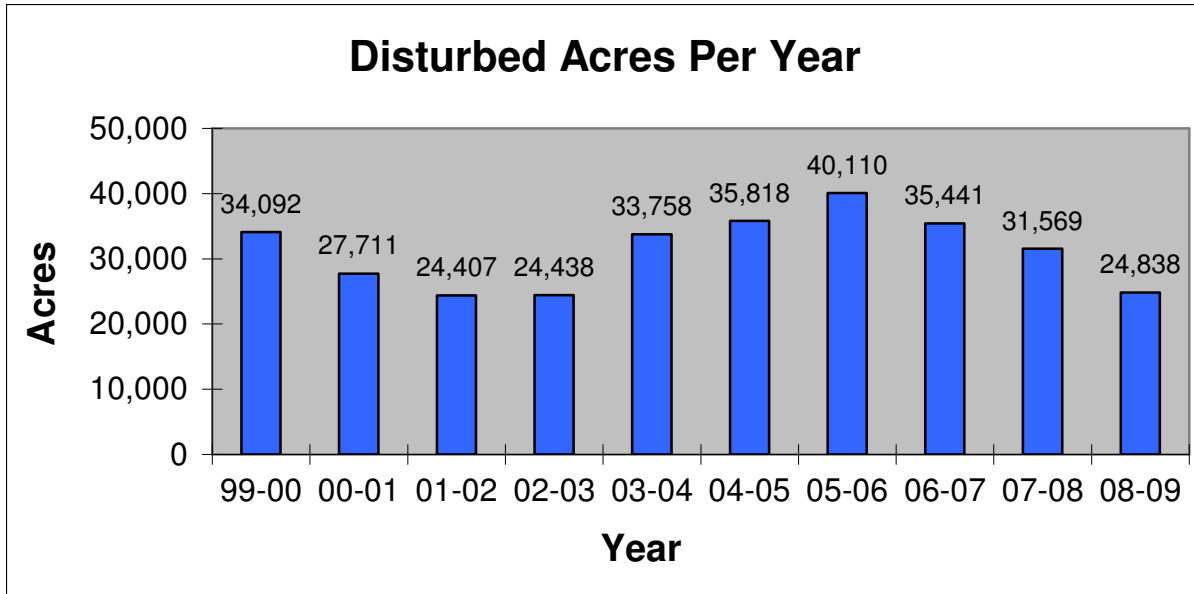
Additional amendments to the Sedimentation Pollution Control Act may be necessary to address these problems of funding and clarification of jurisdiction.

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 number of new projects under State jurisdiction was at its lowest level since the 1994-95 fiscal year. New projects have steadily declined from 3,546 in the 2006-07 fiscal year to 2,542 in the 2008-09 fiscal year. However, the overall number of 8000 active projects has not significantly decreased during the fiscal year because projects have not been completed and closed out. The actual area of land-disturbance covered by new approved erosion and sedimentation control plans decreased to 24,838 acres for the 2008-2009 fiscal year, the lowest level in six years. These totals do not include areas administered by local governments, or land disturbed by the Department of Transportation.





Implementation

The Division of Land Resources, Land Quality Section, administers the SPCA within the Department of Environment and Natural Resources. The Sedimentation Control Commission has also delegated administration of the SPCA to 52 county or 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 Land Quality Section.

The Land Quality Section has 61 full time equivalent positions (FTE) to handle the administration, plan review, inspection and enforcement of the sedimentation program. Three positions were eliminated to meet budget reductions. Fifty-five of the positions are located in the Department's seven regional offices, where they conduct inspections and review erosion and sedimentation control plans.

Regional activities for the 2008-2009 Fiscal Year include:

- 3,260 erosion and sedimentation control plan reviews,
- 19,884 sedimentation site inspections,
- 557 notices of violation, and
- 60 enforcement case referrals.

The Land Quality Section Program collaborates closely with the Division of Water Quality's stormwater management program in permitting, inspection and enforcement activities. The Land Quality Section encloses a copy of the general stormwater permit for construction activities with each erosion and sedimentation control plan approval, and provides the Division of Water Quality with a copy of the financial responsibility/ownership form that accompanies each plan submittal. When sedimentation inspection reports document potential violations of the general stormwater

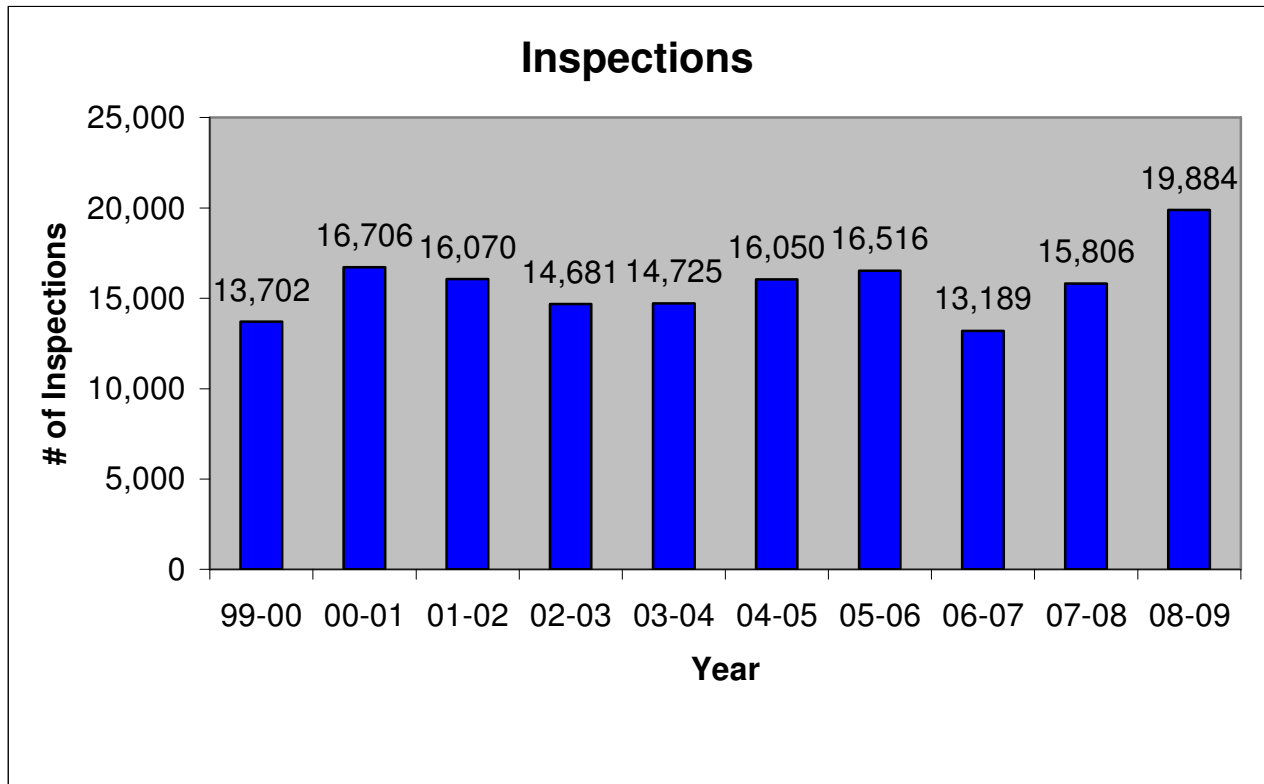
permit for construction activities, a copy is furnished to the Division of Water Quality. Any enforcement activities are coordinated between the agencies.

Plan Approval

The SPCA requires a review of the required erosion and sedimentation control plan within 30 days for a new plan submittal and 15 days for a revised plan. However, an Express Permitting program for erosion and sedimentation control plans provides for plan review within three days for an additional fee, and is now available at all regional offices. During the 2008-2009 Fiscal Year, Express Permit reviews decreased to 434, compared to 584 the year before. The most express reviews were in the Wilmington Region, where it is advantageous to package express reviews of the coastal stormwater permit and the erosion and sedimentation control plan.

Inspection

Inspectors from the seven regional offices inspect land-disturbing activities and complete sedimentation inspection reports. The reports document field observations and compliance or non-compliance with the SPCA. The infrequency of inspections remains a chronic problem that limits the effectiveness of the sedimentation program. Regional staff completed a record 19,884 sedimentation inspection reports in the 2008-2009 Fiscal Year. However, this still resulted in an average interval between inspections of 4.4 months. Complaints remained almost exactly the same as the previous year at 1,030. The Asheville Region again received the most complaints, reflecting public awareness and concern for protecting our valuable mountain water resources.



Enforcement

The Division of 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 19,884 inspections conducted during the 2008-2009 Fiscal Year, 557 (2.8%) resulted in a Notice of Violation. The Notices of Violation led to 60 requests from the regional offices for additional enforcement action (11% of NOV's issued). Forty-six civil penalties were assessed, including 17 initial penalties of \$5000 or less.

The greatest dilemma this past year has been projects that stopped short of completion. Many residential subdivisions were abandoned before completion, without sufficient storm drainage facilities or ground cover to prevent soil erosion. The consequence has been many bare sites left exposed to the rain and wind. Stormwater runoff is often concentrated by graded roadbeds, but is not conveyed in a stable manner by storm drains or permanent channels. The result is deep gully erosion of the roadbeds, fill slopes and unstable ditches. Dramatic collapse of curbing and drop inlets has been observed where all the soil was lost around the structures. Temporary sedimentation basins are not maintained, and eventually overflow with sediment.



Bankrupt subdivision in Gaston County

The Department has sought cooperation with lending institutions that take possession of these bankrupt or foreclosed developments to “limit the bleeding” of sediment into streams and adjoining property.



Foreclosed site in Rowan County with remedial measures provided by lending institution.

There are a number of projects that have been completely abandoned. The developers of these projects have gone bankrupt and the banks have refused to take the property or the Bankruptcy Court Trustee has abandoned the property.

Local Programs

The Sedimentation Control Commission encourages local governments to administer a delegated erosion and sedimentation control program by providing a model ordinance, cost share funding for start-up and technical assistance. Once a program is delegated to a local government, the Land Quality Section provides periodic oversight to ensure that the local programs are meeting the standards for the State program. State personnel informally assist and advise the local staff on problematic sites. A review of each local program is scheduled at least every two years. Land Quality 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 Land Quality Regional Engineer and Sediment Specialist and/or their assistants meet with the local program staff during the review. A detailed report is provided back to the local government, noting strengths, deficiencies and corrective actions. A summary report is presented to the Sedimentation Control Commission at its quarterly meetings. The Commission then takes action to continue the delegation, place the program on probation, or give 30 days’ notice that the Commission will assume administration and enforcement of the program.

Seventeen local program reviews were conducted during the past fiscal year. No programs were placed on probation by the Sedimentation Control Commission. Two of the reviews found problems that warranted a follow-up review to ensure that remedial actions had been taken. One local government placed on probation last year voluntarily rescinded its program. The Town of Columbus in Polk County received new program delegation this year.

Local programs have also experienced the same challenges from bankrupt developments and budget constraints. Some local governments have cut staff or reassigned them to other tasks.

The fees charged by local programs were surveyed and are included in this report. The fee for approval and/or permitting of land-disturbing activity ranges widely, from \$8 to \$980 per acre. The average fee is \$274 per acre and the median fee is \$170 per acre. North Carolina General Statutes set the review fee charged by the Division of Land Resources at \$65 per acre. (To compare the rates of various local programs and the State, a table was developed for the fees associated with a five-acre land-disturbing activity. Using a five-acre site allowed comparison of programs that charge a flat rate, a rate per acre or a combination of both. The resulting values were divided by five to get the per acre rates presented above.)

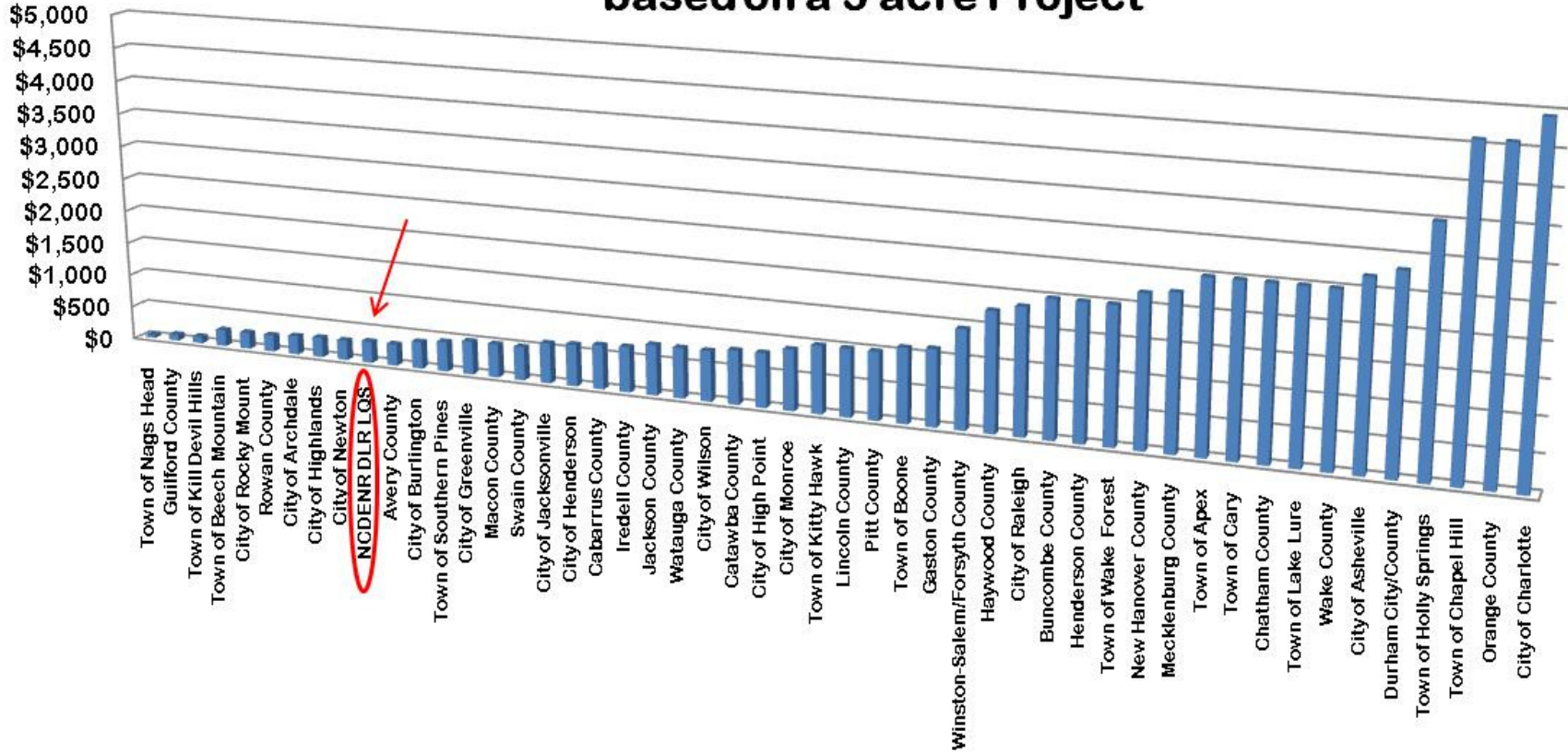
Training

Three workshops were held for design professionals, along with the annual workshop for local government erosion and sedimentation control personnel. N.C. State University is independently offering training workshops on various aspects of erosion and sedimentation control. The N. C. Department of Transportation requires its employees and contractors to obtain certification in erosion and sediment control and stormwater management through one-day courses offered by N. C. State University.

Statutory Amendments

Session Laws 2009-269, 2009-406 and 2009-486 affect the SPCA. S.L. 2009-269 provided that when injunctive relief is sought pursuant to the SPCA, notice should be filed with the Clerk of Superior Court in accordance with N. C. General Statute 1-117. S.L. 2009-406 extended the expiration date of approved erosion and sedimentation control plans. Normally, an approved plan will expire in three years if the project is never started. As a result of S.L. 2009-406, the running of this three year period is suspended until after December 31, 2010. S.L. 2009-486 prescribes temporary erosion and sedimentation control standards for the Upper Neuse River Basin, or Falls Lake watershed. It also requires the Sedimentation Control Commission to develop permanent rules for the watershed by December 31, 2011.

Erosion and Sediment Control Plan Review/Permit Fees based on a 5 acre Project



Regulatory Issues

Development in areas with a high landslide hazard potential, and the construction of artificial slopes remains a serious concern. Whether implemented by local governments or a state agency, uniform standards for development on steep slopes are needed.



Rockfall at a Subdivision in Polk County.

In 2008, House Bill 2506 sought to clarify the process for considering appeals of civil penalties assessed by local governments and to establish the authority of local governments to issue stop work orders. The bill was not reintroduced in 2009, but there may be continuing interest on the part of local governments to have these issues clarified.

The abandonment of developments this past year has renewed interest in requiring reclamation bonds or securities for land-disturbing activity. Nine local governments require a bond as part of their erosion and sedimentation control ordinance. Forfeited reclamation bonds and securities have allowed them to establish adequate groundcover on abandoned developments. The potential environmental damage from an abandoned site increases with the size of the area left bare and eroding. Consideration may now be appropriate for requiring bonding for larger sites. The bonding would target larger projects that have the most potential for sediment loss and not place a financial burden on small projects. Currently, mining activities are bonded in North

Carolina. Reclamation costs for abandoned development are comparable to those for a soil mine, which requires a bond of \$2000 per acre for regrading and establishment of ground cover.

The review fee for erosion and sedimentation control plans is set in the SPCA at \$65 per acre. The funds generated from the review fee have been significantly drained during the past year, requiring the Section to eliminate three positions and leave an additional four positions vacant. By comparison, the fees charged by delegated local programs to cover their costs have a median of \$174 per acre and an average of \$274 per acre. The General Assembly may want to review the adequacy of the review fee to cover state program costs.