



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable Brent Jackson, Chairman
The Honorable Ruth Samuelson, Co-Chairman
The Honorable Mike Hager, Co-Chairman

FROM: Neal Robbins
Director of Legislative Affairs

SUBJECT: Annual Sedimentation Program Report

DATE: October 1, 2014

Pursuant to G.S. 113A-67, the Department is required to report annually to the Environmental Review Commission on the implementation of the Sedimentation Pollution Control Act of 1973. The attached report satisfies this reporting requirement.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at neal.robbs@ncdenr.gov.

cc: Mitch Gillespie, Assistant Secretary for Environment
Carr McLamb, Deputy Director of Legislative Affairs
Jennifer Hoffman, Fiscal Research Division
Tracy Davis, Director, Division of Energy, Mineral, and Land Resources

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

October 1, 2014

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 Land Quality Section in 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 2,037 in FY 2012-13 to 1,974 in FY 2013-14, and the total number of newly disturbed acres also decreased from 24,100 acres in FY 2012-13 to approximately 21,200 acres in FY 2013-14. Sediment inspections likewise dropped slightly from 15,289 inspections in FY 2012-13 to 14,883 inspections in FY 2013-14. In addition, the Sediment Program of the Land Quality Section has also been selected to pilot the AMANDA based Enterprise Certification Licensing Inspection and Permitting System (ECLIPS) which will allow the agency to accept electronic plan submittals, conduct electronic plan reviews and inspections, and update its databases and communicate with its customers in a more efficient manner. Development and testing of the correspondence and database management aspects of the system occurred throughout fiscal year 2013-14, with the first phase of implementation beginning in June 2014.

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

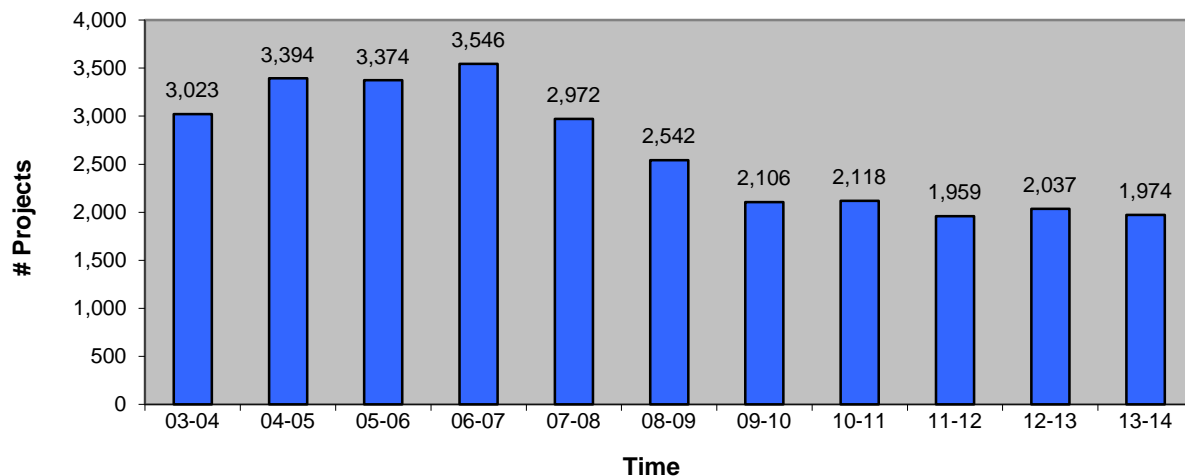
The Division of Energy, Mineral, and Land Resources, Land Quality Section, in the Department of Environment and Natural Resources administers the SPCA. The Sedimentation Control Commission has also delegated administration of the SPCA to 53 county or municipal governments. These local program delegations 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 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 DENR - rather than EPA - to issue federal construction stormwater permits in the state. The state Sedimentation Program plays a critical role in meeting federal construction stormwater permitting requirements under the Clean Water Act. In North Carolina, the NPDES Construction Stormwater Permit (NCG 010000) is issued automatically for a construction site upon receiving “Approval” of its Erosion and Sediment Control Plan. Effective August 1, 2013, the Stormwater Permitting Unit of the Division of Water Resources, including 29 appropriated and receipt based positions administering the construction, industrial, municipal and post construction stormwater programs, was transferred to the Division of Energy, Mineral, and Land Resources, Land Quality Section. The Land Quality Section has already incorporated cross-training of central and regional personnel and consolidation of inspection and monitoring forms between the erosion and sedimentation control program and the construction stormwater program so that one point of contact for meeting both programs’ permitting, inspection and reporting requirements can be used to communicate compliance with both program’s state and federal provisions.

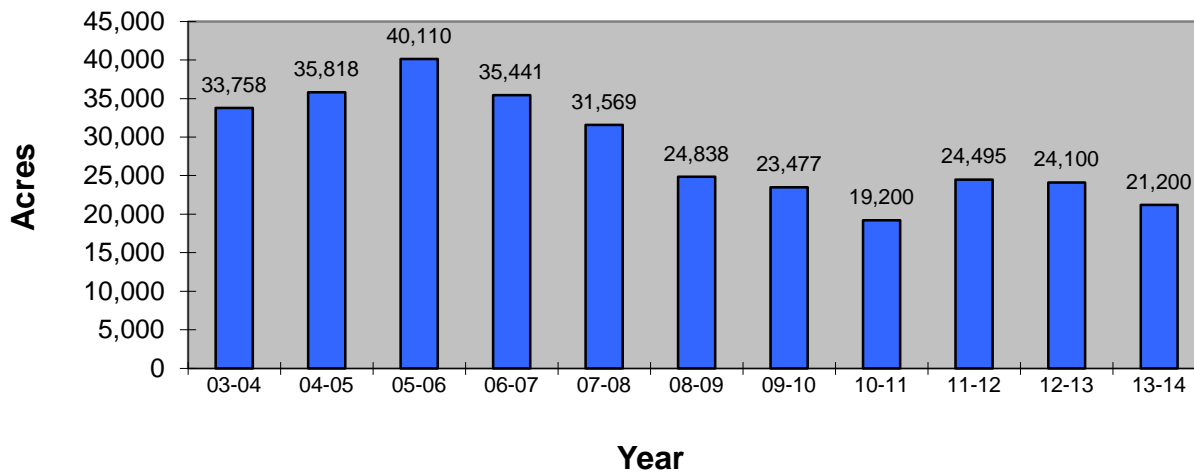
Implementation

The decline in the number of new projects under state jurisdiction has leveled off in recent years with a slight decrease to 1,974 new projects in the 2013-14 fiscal year. The actual area of land-disturbance covered by new erosion and sedimentation control plans approved in 2013-14 was approximately 21,200 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. One new delegated local program, Johnston County, was approved this year.

Permitted Sites Per Year

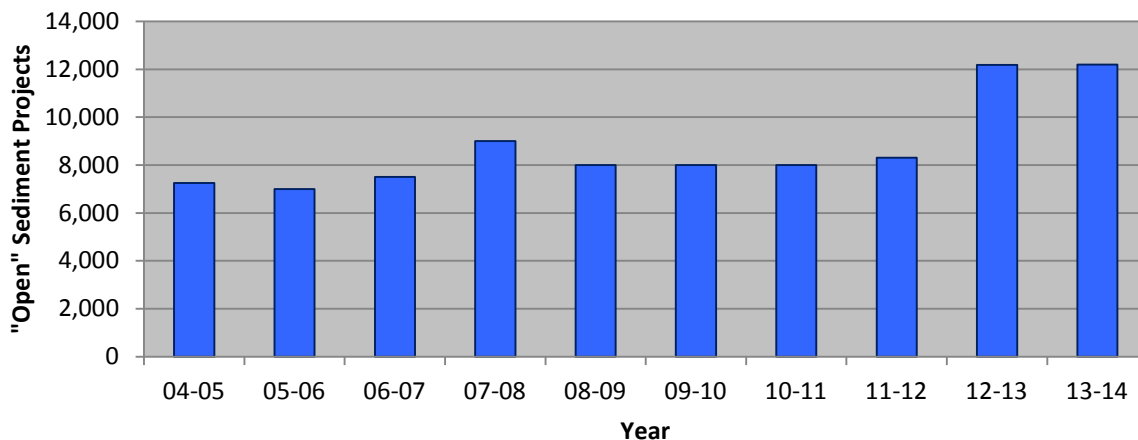


Disturbed Acres Per Year



The number of open sediment projects requiring inspection by the state program has been estimated at 8,000 projects for several years. Improvements to our database reporting capabilities last year resulted in a more accurate estimate of 12,181 open projects for fiscal year 2012-13. This number stayed consistent through fiscal year 2013-14, at approximately 12,196 open projects. The total includes all sites that are either under active construction or are inactive and not completed. While the economic downturn has slowed new project commencement, it has contributed to the consistently high inventory of incomplete projects due to slowdown in project construction or abandonment of a project as a result of foreclosures and bankruptcies.

"Open" Sediment Projects (active/inactive projects that have not been completed/closed)



The number of full time equivalent positions (FTE) in the Land Quality Section for the erosion and sedimentation control program has declined over the past seven fiscal years, to date, 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	34 (based on 6 additional fee-based position cuts underway with additional cuts possible later this year)

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 starts, 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.

Regional activities for the 2013-14 fiscal year include:

- 1,912 new erosion and sedimentation control plan reviews
- 677 revised erosion and sedimentation control plan reviews
- 14,883 sedimentation site inspections
- 168 notices of violation
- 7 enforcement case referrals

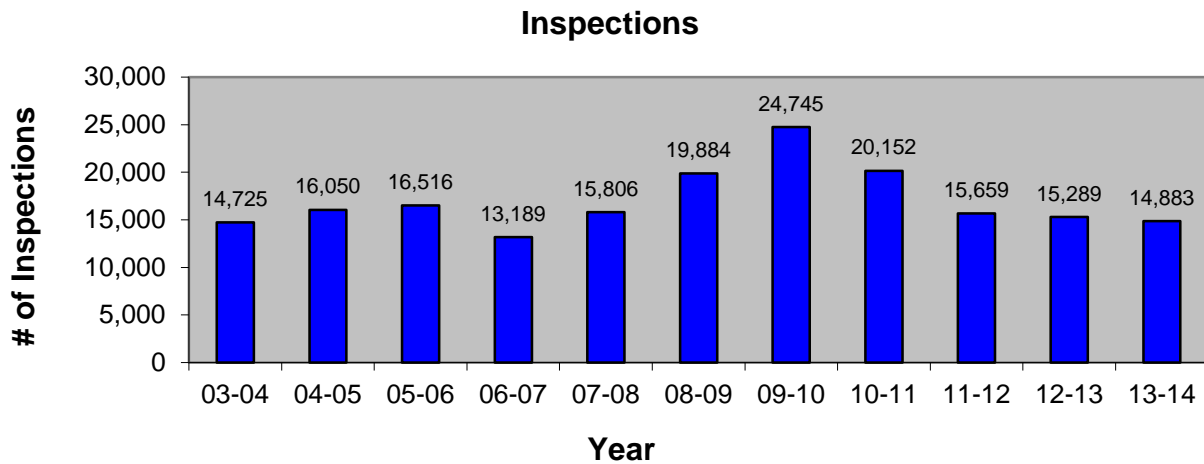
Plan Approval

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 decreased slightly last fiscal year. The number of new erosion and sedimentation control plans received was 1,974 (down slightly from 2,037 in FY 2012-13). For the past three 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 2013-14, 586 Express Permit reviews were conducted. This represents a decrease of approximately 6.24% from the 625 express reviews completed in the previous year. The Fayetteville region had the most express reviews, reflecting the numerous Department of Defense related projects submitted for express review in and around Fort Bragg.

Inspections

Regional staff conducted 14,883 inspections last year, a slight decline of 406 inspections from the previous year. The reports 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 ten (10) months.





Unmaintained Sedimentation Basin filled to the brim with sediment.



Delta of sediment lost into stream below the basin.

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 14,883 inspections conducted during FY 2013-14, 168 (1.1%) resulted in a Notice of Violation (NOV). The NOV's led to 7 requests from the regional offices for additional enforcement action (4.1% of NOV's issued or less than 0.05% of the inspections conducted). Two civil penalties were assessed, one of which was an initial penalty of \$5,000 or less.

The Attorney General's Office continues to work in state courts and federal bankruptcy court to resolve soil erosion, stream sedimentation and landslides at abandoned residential developments resulting from bankruptcy and foreclosure.

New Program Efforts

The DEMLR Land Quality Section is currently in the process of implementing a new electronic plan review, inspection, and database management system for the Sediment Program. The Sediment Program was one of three statewide programs to be selected to pilot the AMANDA based Enterprise Certification Licensing Inspection and Permitting System (ECLIPS). This innovative case management system is web-based and has the capability to handle application submission, plan review, issuance of approvals or denials, enforcement documents (NOV's, etc.), complaints, and real-time inspection data input. Development and testing has been ongoing during fiscal year 2013-14, with the first phase ("Back Office") of this program (for staff only) being implemented in June 2014. This phase allows staff to input application and project data, approvals and disapprovals, complaints, inspections, and notices of violations.

The second phase will be the launch of the ECLIPS mobile application in which inspectors will be able to enter inspection data into the database via handheld tablets while onsite in the field. Ultimately, it is anticipated that inspectors will be able to email inspection reports directly to the financially responsible party immediately and the database will be updated with the inspection in near real time.

The third phase of the ECLIPS system will be the Web Portal. This phase will allow the applicant to submit applications electronically – uploading drawings, calculations, and other information into the system, as well as processing fee payment online – and also to track the status of their submission throughout the review process. Use of the Web Portal should reduce the amount of hard copy plans submitted to each Regional Office. The portal will also allow the 53 delegated local programs throughout the state to submit their monthly activity reports via the web.

With the implementation of this ECLIPS project, the Sediment Program is taking the first steps toward a more modern permitting and inspection system which is anticipated to bring greater efficiency to the major program components (plan review, inspections, complaint response, and enforcement). It should also provide better customer service to applicants by giving them: 1) greater flexibility in the method of plan submission and fee payments, 2) possible reduction in the costs of submission, with the decreased need for printing, and 3) a simple method for tracking the status of their applications.

Local Programs

The Sedimentation Control Commission 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 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. The Land Quality Section 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 a 30 day notice that the Commission will assume administration and enforcement of the program.

Fourteen local program reviews were conducted during FY 2013-14. The regional offices also conducted sixteen informal reviews with local programs last year.

Training

The Division of Energy, Mineral, and Land Resources held four one-day workshops this past year for design professionals, with a total attendance of 340 participants. Representatives from 50 delegated programs participated in the annual workshop for local government erosion and sedimentation control personnel, with a total attendance of 100 participants.