

Land Quality Section (LQS) Response to Conservation Counsel of North Carolina (CCNC) 2010 Report

The Land Quality Section has evaluated the recommendations from the CCNC 2010 Report to the Sedimentation Control Commission. This response will highlight the plans of the Land Quality Section to address areas of concern. The numbers in parenthesis reference the CCNC recommendations, listed at the end of the document. Recommendations Nos. 16-20 and 26-29 require action by the SCC or the General Assembly, and are beyond the authority of the Land Quality Section.

The Land Quality Section has provided regional offices with the information necessary to conduct informal local program reviews. There were a few regional offices conducting informal reviews but the documentation didn't reach the central office. As a result, the regional engineers have been tasked with making sure informal reviews are conducted by the senior environmental specialist who is primarily tasked as a liaison between Land Quality and the local program. Interviews and dialogue take place during formal and informal local program reviews to gauge the needs of the local program. At the close of each formal and informal local program review any concerns or issues with the review are expressed to local program staff. The program manager will be a part of this discussion if available. Documentation of informal local program reviews will be submitted to the Assistant State Sedimentation Specialist and will be recorded and submitted as an information item at Sedimentation Control Commission meetings. At various times of the year regional and/or central office staffs ask for updated contact information. Updated contact information is collected before sending out registration for the Local Programs Workshop.(1,8,9,10)

There is current policy in place to conduct formal local program reviews every two years as long as staff is available. A procedure for doing informal reviews will be developed and sent to the regional offices. Regional office staff will be trained to follow this procedure. (2)

Each local program review covers the importance of the local program submitting monthly reports. At the close of each formal and informal local program review any concerns or issues with the review are expressed to local program staff. In the past, regional office staff have encouraged local governments to create local programs. The Education Specialist is working to create a brochure highlighting the benefits of having a local program. This brochure will be posted on the website, and disseminated to the regional offices for further distribution for targeted local governments. Each year the Education Specialist promotes delegated local programs at the annual meetings of the League of Municipalities or the Association of County Commissioners. (3,4,9)

Land Quality is in the process of updating the information that is required for local programs to submit as part of the Monthly Activity Reports. In addition to the information required Land Quality will require new project name, latitude and longitude of new project, and the number of complaints. IBEAM, the database that Land Quality utilizes to record local program data will require some modification to add these fields. Upon successful completion of this task Land Quality will require the additional information from the local programs. The CCNC 2010 Report recommended that monthly reports expand to include exact dates when active sites are opened

and closed, inspections reports, all instances of non-compliance (as opposed to only NOV's), as well as a parameter for quickly reporting less formal site visits when sites were in compliance. Unfortunately, recording opening and close dates for projects is not technically feasible with the software program Land Quality currently uses. (5, 6)

Due to the time and effort to review ordinances, Land Quality Section will provide the local programs with significant changes in the Model Ordinance. Recent changes to the Act must be reflected in the local ordinance. The Land Quality Section will update the Model Ordinance. (7)

Land Quality Section plans to implement training at the next workshop to address civil penalty appeals and provide guidance to processes that are lacking. Each Local Program will be required to bring a current copy of their Local Ordinance to the Local Programs Workshop and a joint review will be conducted. (11, 24)

The creation of a web portal will be considered when funds are available. (12,14)

Monthly Activity Reports submitted by the local programs are recorded into IBEAM by the Assistant Sedimentation Specialist and will be recorded in the new web portal once it has been created. (15)

A written delegation procedure will be developed and posted on the Land Quality Website. In the meantime, the Education Specialist will work on revising the local program section of the Land Quality Website to show that no funds are available for local program contracts. If funds become available in the future, a mass email including the application and requirements for start up funds will be sent. (21)

Staff will work with the Education Committee to address Local Program concerns about the annual training and to establish an attendance policy for that training. (22, 23)

The Land Quality Section recommends that the SCC get the Commission Counsel to work with staff to draft a MOU/MOA that outlines the requirements for maintaining an effective local program, the submission of monthly activity reports, the resources and expertise required to effectively administer a local program, and the notification of personnel/leadership changes within the local program. The MOU/MOA would be signed by the SCC Chair and the head of the local government.

CCNC RECOMMENDATIONS

To address issues highlighted by the above conclusions, as well as encourage increased compliance with SPCA requirements and policy goals, the Council proposes the following recommendations:

1. We recommend that LQS regional offices continue to conduct informal annual reviews to ensure that information is available for the annual ERC report. Regional staff should be trained and the informal review should be properly documented.
2. We recommend that LQS conduct formal reviews at least once every two years, in conjunction with better documentation of ongoing informal reviews that Regional Offices currently undertake.
3. We recommend that LQS expand the local program review process, as well as LQS reports on local programs to the SCC, by addressing additional information necessary for evaluating and encouraging local programs.
4. Local program evaluations should address whether local programs consistently file monthly reports with adequate data.
5. We recommend that local program monthly reports to LQS require uniform filing and specific parameters which must be documented, including data on number of complaints received.
6. We recommend that monthly reports expand to include exact dates when active sites are opened and closed, inspections reports, all instances of non-compliance (as opposed to only NOVs), as well as a parameter for quickly reporting less formal site visits when sites were in compliance.
7. We recommend that informal regional and formal central LQS reviews include a review of local ordinances. While full ordinance review is ideal, at a minimum, a review of whether local ordinances meet mandatory standards and reflect any requirements that have changed in the last decade should facilitate better compliance with the SPCA while expending nominal LQS resources and time.
8. We recommend that LQS provides training for regional staff to ensure that informal reviews are adequately conducted.
9. We recommend that LQS provides information to encourage and support local programs during formal and informal reviews.
10. We recommend that program reviews include interviews and conversations to gauge local program needs and concerns. Interviews should also address needs to update documented

local program contact information, or other information necessary to facilitate communication between LQS and local programs.

11. We recommend that LQS incorporate civil penalty appeals into annual local program reviews. LQS should evaluate each local appeals process and provide guidance when the process is lacking. Evaluations should focus on whether local program ordinances currently include an acceptable appeals process. LQS reports to the SCC on local program reviews should include an evaluation of local programs' civil penalty appeals processes.
12. We recommend that updates to the appeals process, as well as contact information for assistance, are posted in the information section of the private web portal.
13. We recommend that LQS contact local legal counsel, as well as local program staff, to ensure awareness amongst individuals responsible for addressing the civil appeals process.
14. We recommend that LQS create a private web portal for local programs. This portal should provide access to educational information, local ordinances, land disturber compliance history, changes to the SPCA, rules, and policy, as well as a discussion forum for local programs.
15. We recommend that local program monthly reports should be uploaded through this portal so all local program requirements and information are in one easily accessible location.
16. We recommend that the SCC re-evaluate the 1997 Plan of Action to determine sufficient staff and resources needed to conduct monthly inspections and the appropriate fee adjustment required to meet that staffing level.
17. We recommend that the SCC release a resolution encouraging increased LQS permitting fees to provide LQS with adequate staffing resources.
18. We recommend that the SCC request an SPCA amendment which would transfer fee determination to the SCC.
19. We recommend that the SCC evaluate instituting a general fee with incentives awarded to developers with positive development and compliance histories.
20. We recommend that the SCC draft a policy statement encouraging LQS to develop and implement a strategy to encourage local municipalities to seek local program delegation, by providing easy access to adequate information and guidance documents and fostering local grassroots and public interest organization support for local delegation, etc.
21. We recommend that the DENR website contain updated information on the delegation process. This information should include: the benefits and possible incentives of delegation, guidance documents with extensive information laying out the specifics of the delegation process, information needed to achieve delegation, how the actual transition from LQS to local jurisdiction proceeds, and local program reporting responsibilities post-

delegation. Delegation information should be updated on the DENR website to ensure a smooth delegation process while encouraging informed local decisions.

22. We recommend that the SCC and education committee address local program complaints regarding the annual training conference. The committee should determine the feasibility and benefit of breakout sessions, regional discussion forums, as well as down time for networking and communication.
23. We recommend that the education committee establish a better attendance policy than the current 'two attendees from each program' limit, possibly based on program staff size or program performance.
24. We recommend increased training on civil penalty appeals process during the annual conference.
25. We recommend that the SCC issue a policy statement encouraging LQS regional office staff to attend and facilitate regional discussion and information sessions.
26. We recommend that the SCC research performance securities to determine the form, use and amounts which would most likely protect local programs and provide a mechanism to address abandoned sites.
27. We recommend that the SCC further analyze performance securities with the goal of recommending securities for LQS sites in the 2011 ERC report.
28. We recommend that a uniform qualification requirement be established in order to ensure that personnel meet a minimum level of ability to implement and enforce erosion control. Currently local programs and self inspectors have no mandatory minimum qualifications.
29. We recommend that the SCC issue a resolution supporting draft bills requiring minimum inspector qualifications.