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## Recommendations

**Recommendation 1. The General Assembly should amend state law to outline reporting requirements for delegated local programs and mandate that the Erosion and Sedimentation Control program review delegated local programs at least once every five years.**

As detailed in Finding 2, local units of government can request approval from the Sedimentation Control Commission (SCC) to administer an erosion and sedimentation control program. Upon approval, delegated local programs agree to regularly report state-requested data fields. Currently, reporting from delegated local programs is inconsistent. In addition, as discussed in Finding 2, although delegated local programs agree to undergo program reviews, the Erosion and Sedimentation Control (E&SC) program is not regularly performing reviews to oversee delegated local program operations.

The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources, in coordination with the SCC, to review and suggest modifications to state law regarding the reporting requirements of delegated local programs. The following requirements should be considered:

- reported data elements include, but not be limited to, those the State is required to submit to the U.S. Environmental Protection Agency;
- data reporting and submission format;
- frequency of reports; and
- validation of delegated local program activities in efforts to ensure accountability of local program operations.

Additionally, the General Assembly should direct the SCC to amend any existing agreements with delegated local programs to require the same detailed reporting requirements and direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to enforce all reporting requirements for delegated local programs.

The General Assembly should also amend state law to specify that all delegated local erosion and sedimentation control programs undergo a program review at least once every five calendar years.

Further, the General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to develop policies and procedures towards establishing an appropriate schedule to meet this new statutory target.

The Department of Environmental Quality's Division of Energy, Mineral and Land Resources should report to the Environmental Review Commission, the Joint Legislative Program Evaluation Oversight Committee, and the SCC by January 1, 2020 on its suggestions for amending the reporting requirements of delegated local programs and the use of such information to conduct delegated local program reviews.

**Recommendation 2. The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to formally collect, maintain, monitor, and report data on its internal target of 25 days for review and determination of erosion and sedimentation control plans.**

As discussed in Finding 3, current state law stipulates that the Erosion and Sedimentation Control (E&SC) program issue a determination of approved, approved with modifications, or disapproved for draft erosion and sedimentation control plans for land-disturbing activities within 30 days of receipt and 15 days for revised plans. When using these statutory statewide measures as a benchmark for performance, the vast majority of plans receive a determination within the required time frame of 30 days (99.7%) and 15 days (99.4%).

The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to formally collect, maintain, and monitor data on its current internal target for initial plan review and approval of 25 days.

Additionally, in an effort to stretch E&SC program performance, the General Assembly should direct DEQ DEMLR to maintain records for a two-year period to demonstrate whether this performance target is being met both statewide and by regional offices. Records should be reported to the Sedimentation Control Commission (SCC) quarterly. In coordination with the E&SC program, the SCC should determine the need for any subsequent modifications to further reduce the internal target of number of days allotted for initial plan review and approval based upon quarterly reports and maintained records for the two-year period.

The Department of Environmental Quality's Division of Energy, Mineral and Land Resources should report on the progress of these actions to the Environmental Review Commission and the Joint Legislative Program Evaluation Oversight Committee by January 1, 2020.

**Recommendation 3. The General Assembly should direct the Sedimentation Control Commission to develop administrative rules to include the use of site-specific risk factors to prioritize monitoring and compliance activities.**

As discussed in Finding 4, the Erosion and Sedimentation Control (E&SC) program does not use a risk-based approach to evaluate how often sites should be inspected. Erosion and sedimentation control plans are approved with site-specific controls targeted at meeting the unique needs for controlling erosion and sedimentation at a construction site, but sites pose different levels of risk for erosion and sedimentation damage. Risk-based inspections establish a frequency for inspecting a site based on the potential risk for environmental damage from erosion and sedimentation.

The General Assembly should direct the Sedimentation Control Commission to develop administrative rules to include the use of risk factors. By developing and implementing a risk-based approach to performing inspections, E&SC program staff will be able to target the riskiest sites for

inspections before sites that have a low risk for erosion and sedimentation damage. Additionally, the E&SC program should be directed to amend any existing policies, procedures, and handbooks that reference risk factors to include these newly developed rules to provide clear guidance on the use of risk factors for prioritizing inspections.

The Department of Environmental Quality's Division of Energy, Mineral and Land Resources should report on the progress of these actions to the Environmental Review Commission and the Joint Legislative Program Evaluation Oversight Committee by January 1, 2020.

**Recommendation 4. The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to abide by inspection policies and coordinate with the regulated community for the performance of site inspections.**

As discussed in Finding 4, the Erosion and Sedimentation Control (E&SC) program does not schedule site inspections with the regulated community even though the Inspector's Guide directs E&SC staff to do so when possible. Coordinating site inspections with the regulated community may assist developers and contractors in understanding how to properly correct violations and thereby reduce the need for excessive follow-up inspections and further prevent environmental damage from erosion and sedimentation.

The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to abide by inspections policies and coordinate inspections with the regulated community through a clear and well-developed scheduling process and report on the progress of its actions to the Environmental Review Commission, Joint Legislative Program Evaluation Oversight Committee, and the Sedimentation Control Commission by January 1, 2020.

**Recommendation 5. The General Assembly should amend state law to reduce dependence on appropriations by increasing erosion and sedimentation control plan review fees to \$125 per acre of disturbed land to fully support the cost of Erosion and Sedimentation Control program operations.**

As described in Finding 5, current regulations require any development with greater than one acre of disturbed land to develop and submit an erosion and sedimentation control plan and submit a fee of \$65 per disturbed acre. Although fees have changed over time, fees remain low compared to those assessed by other states and delegated local programs in North Carolina. Fees have not kept pace with inflation and currently do not support the cost of administering the Erosion and Sedimentation Control (E&SC) program. As a result, the General Assembly is required to subsidize what is intended to be a self-supporting program through state appropriations. To support current operations without the need for appropriations, fees would need to be raised to \$122 per disturbed acre.

To enable fees to fully fund program operations, the General Assembly should amend state law to increase the current application fee of \$65 per acre of disturbed land (as shown in an erosion and sedimentation control plan or as actually disturbed) during the life of a project to \$125 per disturbed acre. Increasing fees to this amount will support the total cost of the E&SC program and will allow North Carolina's fees to more closely mirror neighboring states while still remaining comparatively low.

To ensure funds do not accumulate excessively over time, the General Assembly should also consider amending state law to establish an upper maximum of funds that can be held within the Sedimentation Account.

**Recommendation 6. The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to establish information management policies and a performance management system for the Erosion and Sedimentation Control program.**

As discussed in Finding 6, the Erosion and Sedimentation Control (E&SC) program has limited performance measures outside of statutorily-mandated and internal targets, most of which cannot be sufficiently utilized because of a lack of valid and reliable data resulting from an absence of adequate information management policies and practices.

The General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to establish information management policies to ensure the collection and use of valid and reliable E&SC program data. Additionally, the General Assembly should direct the Department of Environmental Quality's Division of Energy, Mineral and Land Resources to create, in coordination with the Sedimentation Control Commission, a performance management system that includes

- internal objectives and associated targets for all components of the E&SC program by regional office,
- policies and practices that outline the collection of the internal objectives and targets at the regional office level and specific to regional office operations, and
- benchmarking of regional offices to statewide performance for each objective and target.

The Department of Environmental Quality's Division of Energy, Mineral and Land Resources should report to the Environmental Review Commission, Joint Legislative Program Evaluation Oversight Committee, and the Sedimentation Control Commission by January 1, 2020 on its actions to develop and implement information management policies and procedures as well as a performance management system for the E&SC program.