

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
May 16, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 16, 2013 at 10:00 a.m. in the Ground Floor Hearing Room, Raleigh, North Carolina. The following persons were in attendance for all or part of the meeting:

COMMISSION MEMBERS

Ms. Robin K. Smith (Chair)
Mr. Joe Glass
Mr. Jonathan Bivens
Mr. Rob Weintraub
Dr. Rich McLaughlin
Mr. Randy Veltri
Mr. Tommy Anderson
Ms. Heather Jacobs Deck

OTHERS

Mr. Tracy Davis, Director, Division of Energy, Mineral, and Land Resources (DEMLR)
Mr. Mell Nevils, Section Chief, Land Quality Section
Mr. Toby Vinson, Chief Engineer, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Mr. Gray Hauser, State Sedimentation Specialist, Land Quality Section
Mr. Matt Poling, Assistant State Sedimentation Specialist, Land Quality Section
Mr. Shawn Maier, Assistant Attorney General
Mr. Jim Simons
Ms. Jean Spooner, WRRRI
Dr. Susan White, WRRRI
Ms. Nicole Wilkinson, WRRRI
Mr. Tom Gerow, NC Forest Service
Mr. David Harris, NC Department of Transportation
Ms. Anna Petryniak, Duke University, League of Conservation Voters

PRELIMINARY MATTERS

Ms. Smith called the meeting to order and read Executive Order No. 1.

Those in attendance introduced themselves.

Ms. Smith asked for a motion to approve the minutes from the February 28, 2013 meeting.

The motion to approve the minutes was made by Mr. Glass. Mr. Bivens seconded the motion, and it was approved unanimously.

Statement of Economic Interest for New Commissioners -- Mr. Gray Hauser

Mr. Hauser indicated there are no Statements of Economic Interest to present to the Commission, but provided an update on new members.

There are currently ten members on the Sedimentation Control Commission. Two vacant positions have not been reappointed by the Governor's office. Dr. Voiland previously resigned from the Commission, upon retirement from WRRRI. Mr. West recently submitted an official letter of resignation to the SCC, since his term ended on the Soil and Water Commission. The vacancies are expected to be occupied by the new WRRRI Director, Dr. Susan White, and the Soil and Water Commission nominee, Mr. Charles Hughes. The Governor's office has not acted on appointing new members over the past year.

Ms. Smith asked whether the Commission could do anything to expedite the appointment process. Mr. Nevils indicated the Soil and Water Commission has talked with the Governor's office, under the previous and current administrations, but no action has been taken on the matter.

Ms. Smith thanked Mr. West for his service to the Commission.

ACTION ITEMS

Education Contracts -- Mr. Gray Hauser

Mr. Hauser presented the recommendations of the SCC Education Committee for the 2013 Fiscal Year contract proposals.

1. Support for Annual Workshop and Awards Luncheon for Local Programs -- \$70,235

Mr. Weintraub asked if any consideration has been given to requesting local programs to subsidize employee participation for the workshop. He asked if any revenue is generated from sponsors or vendors. Mr. Hauser indicated exhibitors do not participate in this event, which is targeted at regulatory personnel. He added the budgets for some of the delegated programs are limited, and the goal is to reach each local government.

Ms. Smith added this workshop is intended to be a training opportunity for the delegated programs to share regulatory changes. The Commission and Division use this opportunity to educate the programs on issues, which is beneficial for all involved. She asked whether acquiring sponsors is an option, and if the budget is adequate for this expenditure. Mr. Hauser indicated the state budget has not

been released, but the appropriated education funds are expected to be similar to last year.

Staff suggests approving the proposal contingent upon budget funding. The Education Committee suggested the following priority order for contract proposals: "Support for Annual Workshop and Awards Luncheon for Local Programs," "Support for Four Workshops to Train Design Professionals," and "Sediments Newsletter."

Mr. Bivens asked if any funds are generated from exhibitors for the workshops. Ms. Wilkinson indicated the exhibitors for the Design Workshops pay a slightly higher registration fee. The fees collected are included among the registration receipts, which help to offset the overall cost of each workshop.

Mr. Nevils indicated the registration receipts, collected for each event, reduce the cost to the Division. WRRI has lost money over the last couple of years on the workshops, due to the lack of registrants.

Mr. Bivens encouraged solicitation of sponsors for the upcoming year to generate additional fees. Ms. Smith asked Commissioners to forward potential vendor names to WRRI for invitation to upcoming events.

Mr. Weintraub asked whether this project has been sent to private entities for bids. Mr. Nevils indicated use of the request for proposal (RFP) process was evaluated in previous years, but would have cost the Division more to implement. Mr. Glass added the project cost would increase significantly by using private companies interested in profit-making.

Ms. Smith suggested taking action on the proposals independently.

Ms. Deck made a motion to approve the proposal, "Support for Annual Workshop and Awards Luncheon for Local Programs," contingent upon budget funding. Dr. McLaughlin seconded the motion, and it was approved unanimously.

2. Support for Four Workshops to Train Design Professionals -- \$49,514

Mr. Glass made a motion to approve the proposal, "Support for Four Workshops to Train Design Professionals," contingent upon budget funding. Ms. Deck seconded the motion, and it was approved unanimously.

3. Sediments Newsletter -- \$17,020

Dr. McLaughlin recused himself from voting on the "Sediments Newsletter" proposal, due to possible conflict of interest.

Ms. Smith recognized Ms. Deck has joined the Commission meeting, which was not noted in the original roll call.

Mr. Veltri made a motion to approve the proposal, contingent upon budget funding. Mr. Glass seconded the motion.

Mr. Weintraub suggested staff consider bids from additional sources for preparation of the newsletter. Some companies prepare newsletters free, if content is provided. Mr. Nevils indicated generating suitable material has been an issue in the past.

Suggestions were made for staff to evaluate adequacy of newsletter content and delivery for future contracts.

Ms. Smith called for a vote on the motion made by Mr. Veltri. It was approved unanimously.

Local Program Reviews -- Mr. Matthew Poling

Mr. Poling reported on the reviews of the Counties of Haywood, Henderson, and Mecklenburg and the Cities of Henderson and Newton delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Ms. Smith asked if there were any questions regarding any of the local program reviews for discussion by the Commission. Staff recommends continued delegation for the five local programs.

Ms. Deck asked for an update on the Mecklenburg County project (Carolina Village Phase I), which had off-site sediment on the day of the program review. Mr. Poling indicated the subdivision had been developed, and sediment entered the storm drainage system. The majority of the site had been stabilized. Sediment in the storm water pipes was flushed out during a rain event, and made its way off the site. Crews were using buckets and shovels to recover the sediment.

Ms. Deck asked if the sediment entered a stream. Mr. Poling indicated the sediment entered a wetlands area.

Ms. Deck asked if DWQ had been notified to report the sediment loss. Mr. Poling indicated DWQ had been contacted. Mr. Nevils added Mecklenburg County has their own delegated DWQ program, and the state likely did not get involved with this incident.

Mr. Glass asked if there was an issue with the delegated programs regarding self-inspections, considering it was a point of reference for each of the reviews conducted. Mr. Poling indicated the self-inspection program is still fairly new, and the reference is intended to make sure each delegated program is aware of the requirements.

Ms. Smith asked how the programs are responding to the recent changes in the General Stormwater Permit for 7/14 day ground cover requirements. Mr. Poling

indicated the programs are asking for the revised ground cover requirements to be included on the erosion control plans.

Dr. McLaughlin asked if the local programs are documenting the timeframes that slopes are left bare on project sites. Mr. Poling indicated the local programs do have problems recording those timeframes, and the issue has been discussed in detail with field staff.

Ms. Smith suggested taking a comprehensive vote for the five local programs, currently recommended for continued delegation.

Mr. Bivens made a motion for continued delegation of the Counties of Haywood, Henderson, and Mecklenburg and the Cities of Henderson and Newton local programs. Dr. McLaughlin seconded the motion, and it was approved unanimously.

Memorandum of Agreements with Local Programs -- Mr. Gray Hauser

Mr. Hauser gave a brief discussion of the Memorandum of Agreement (MOA), approved by the SCC, to be adopted by each local program. The city of Rocky Mount has signed the MOA and requested agreement by the SCC.

Mr. Weintraub made a motion to approve the MOA. The motion was seconded by Ms. Deck, and it was approved unanimously.

Amendments to Pitt County Erosion Control Ordinance -- Mr. Gray Hauser

Mr. Hauser indicated the amendments have been reviewed by staff. The following modifications were included:

1. Amended Sections 5 and 21 to reflect the change in name of the Division of Land Resources to the Division of Energy, Mineral, and Land Resources.
2. Amended Section 10 to change groundcover requirements to 21 days on slopes (similar to SPCA).
3. Added sub-section M. Self-Inspections to Section 20. Erosion and Sedimentation Control Plans.

Staff recommended approval of the amended Pitt County Erosion Control Ordinance.

Mr. Hauser clarified a previous inquiry by Dr. McLaughlin concerning content of Section 12 (Stormwater Outlet Protection) in the ordinance. He indicated the table for maximum permissible velocity for stormwater discharges is in the North Carolina Administrative Code, which has been incorporated into the ordinance. The rules in Section 12 are as stringent as the Sedimentation Pollution Control Act (SPCA).

Mr. Weintraub asked if the ground cover requirements should have followed the 7/14 days outlined in the NPDES General Stormwater Permit. Mr. Hauser indicated those requirements are not included in the DEMLR Administrative Code or General Statutes, and the latest amendment is as stringent as the SPCA. The 21 days refers to slopes regardless of whether the site is less than or greater than one acre. Coverage under

the NPDES, for sites greater than one acre, requires inclusion of the 7/14 day groundcover guidelines on the erosion control plan. He added recommendations have been made to the local programs to adopt time limits for groundcover to match those in the NPDES permit.

Ms. Smith asked if that recommendation was made to Pitt County. Mr. Hauser did not recall. The updated ordinance was submitted, and it satisfied standard requirements as outlined in the SPCA.

Mr. Bivens asked for clarification of the conflicting mandatory standards:

- Section 10.B -- 21 calendar days for vegetative cover on graded slopes and fills.
- Section 10.C -- 15 working days/90 calendar days for groundcover.

Mr. Hauser indicated the language in Section 10.C is similar to the SPCA requiring provisions for permanent groundcover on sites greater than one acre, after completion of construction, within 15 working/90 calendar days. The NPDES requirements for groundcover will supersede the SPCA.

Ms. Deck asked if other counties have incorporated the NPDES Permit language for groundcover into their ordinances, and could Pitt County revise their ordinance as such. Mr. Hauser indicated a recent submittal from Lincoln County did incorporate the NPDES language.

Ms. Smith asked if the Commission would like to recommend Pitt County revise the ordinance to include the NPDES requirements for groundcover.

Mr. Hauser indicated the ordinance does satisfy requirements of the SPCA. The County has been advised by staff not to issue the NPDES Permit unless the 7/14 day groundcover requirements are included on the erosion control plan for sites greater than one acre.

Mr. Bivens asked staff to encourage consistency among the ordinances, when consulting with the delegated programs during planning.

Mr. Weintraub asked if the County has signed a MOA. Staff indicated a MOA has been signed by Pitt County. Mr. Weintraub added the MOA indicates the County will satisfy all requirements of the NPDES, which requires no further action by this body to approve the ordinance.

Ms. Deck asked if a model ordinance is available for use by the delegated programs. Mr. Hauser indicated a model ordinance is available, the Commission may choose to update the language to address compliance with the NPDES groundcover requirements. There is no language in the SPCA regarding the 7/14 day ground cover requirements. However, the Division has signed a MOU with DWQ to coordinate consistent application of the rules.

Mr. Nevils indicated the model ordinance can only include requirements outlined in the SPCA and the Departmental rules. The delegated programs cannot be required to adopt anything more restrictive.

Ms. Deck made a motion to approve the request from Pitt County to amend the erosion control ordinance. The motion was seconded by Mr. Veltri, and it was approved unanimously.

INFORMATION ITEMS:

Request for Practice Standards and Specifications for Stream Restoration -- Mr. Mell Nevils

Mr. Nevils notified the Commission that Mr. Westmoreland was not able to attend the meeting, due to unforeseen circumstances. He will be added to a future agenda to discuss development of practice standard for stream restoration for inclusion in the *Erosion and Sediment Control Planning Design Manual*.

Legislative Update – Mr. Mell Nevils discussed the following items:

- **House Bill 480 -- Environmental Permitting Reform**
The bill requires development of minimum design criteria for stormwater permits and erosion and sedimentation control plans. Staff met with the representative sponsor to discuss the difficulty in developing a minimum design plan for the entire state. Erosion and sediment control was later withdrawn from the bill.
- **Senate Bill 612 -- Regulatory Reform Act of 2013**
The bill creates a fast track permitting process for certain environmental permits, and preempts local governments from ordinances more restrictive than state requirements.

Mr. Weintraub asked how this bill effect will affect the delegated programs. Mr. Nevils indicated they cannot be any more restrictive than the state program. Ms. Smith added the programs will likely be reverted to the state, which will be an influx of permits for the Department.

Mr. Anderson asked if staff has considered Section 6.1, which mandates reform of existing state rules to be no more restrictive than similar federal rules. Mr. Nevils indicated federal laws relate to stormwater, not erosion and sediment control.

Mr. Nevils mentioned another provision in SB612 that requires plan submittals by a Professional Engineer (PE) to be reviewed and signed by a PE with the state agency.

- **House Bill 484 -- Permitting of Wind Energy Facilities**
The bill requires permits for wind and energy to be submitted to the Energy

Section of DEMLR.

- **House Bill 779 -- LRC Study Infrastructure/Foreclosed Property**
The bill requires bonding for sites over one acre. It will likely be studied for erosion and sediment control.
- **House Bill 279 -- Transfer Environmental Permits**
The bill allows the Department to transfer permits without the consent of the permit holder to a successor-owner.
- **Senate Bill 10/House Bill 1011 --**
The bill reorganizes a number of Commissions.
- **Senate Bill 507 -- Eliminated Outdated Environmental Reports**
The bill eliminated the annual mining report submitted to the Legislature.
- **House Bill 94/Senate Bill 112 -- Amend Environmental Laws 2013**
The bill amends the law requiring the local programs to go to the Office of Administrative hearings with contested cases. It also provides that civil penalties assessed by a local government pursuant to the SPCA be remitted to the civil penalty and bond forfeiture fund.
- **House Bill 74/Senate Bill 32 --**
The bill requires all rules to be repealed and readopted every 10 years.
- **Senate Bill 127 --**
The bill reorganizes the regional offices to align multiple state agencies.

Ms. Smith asked if the Legislature has considered staffing requirements needed to address these potential laws. Mr. Nevils indicated no consideration has been given.

Report on Local Program Assistance by Regional Offices -- Mr. Gray Hauser presented a report on the Raleigh Regional Office assistance to Chatham County. A copy of this report is attached to the original minutes.

Enforcement Report -- Mr. Hauser gave a summary of the Attorney General's enforcement report, on behalf of Mr. Payne. A copy of this report is attached to the original minutes.

Land Quality Section Active Sediment Cases Report -- Mr. Hauser presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

NCDOT Report -- Mr. Hauser presented a report on Immediate Corrective Actions issued by NCDOT. Staff discussed the NCDOT Revision to Trout Waters Construction Guidelines. A copy of the report and guidelines are attached to the original minutes.

Staff worked with NCDOT to revise the Trout Waters Construction Guidelines. The updates and revisions include the following:

1. Updating the ground cover requirement in No. 3 of the "General Erosion Control Notes for NCDOT Projects in Trout Waters" to 7 calendar days.
2. Adding language to utilize flocculants during construction in the general notes.
3. Replacing Kentucky Bluegrass with Creeping Red Fescue in the Native Grass Seed Mix.

Education Program Status Report -- Mr. Hauser presented a report on behalf of Ms. Lowery-Jacobs on the past and current projects in the Sediment Education Program. A copy of this report is attached to the original minutes.

Sediment Program Status Report -- Mr. Poling provided a report on the LQS current plan approval, inspection, and enforcement activities statewide.

Mr. Weintraub asked if closeout projects are tracked monthly. Mr. Nevils indicated the number of active projects is evaluated periodically, which allows determination of closeouts.

Ms. Deck asked if there are staffing issues in the Raleigh Regional Office, considering their numbers compared to other offices. Mr. Nevils indicated staff is working with that office to make improvements.

Land Quality Section Report -- Mr. Nevils provided a report on the current number of vacancies in the Section and other LQS activities and issues. He thanked staff for their efforts.

Mr. Nevils announced to the Commission his retirement from DEMLR, effective July 1. He thanked members for the opportunity to participate with the Commission throughout the years.

CONCLUSION

Remarks by the Director -- Mr. Davis thanked Mr. Nevils for his efforts to the Land Quality Section. He assured the Commission that staff is monitoring legislation, and tracking the progression of bills critical to the Division.

Mr. Davis mentioned a pilot program for fast track approvals on single residential lots, under development in the Mooresville Regional Office. An e-permitting pilot program is also under development with the Office of Information Technology Services (OITS) for the Sediment Program. Ms. Smith asked staff to be aware of limited internet access in remote areas.

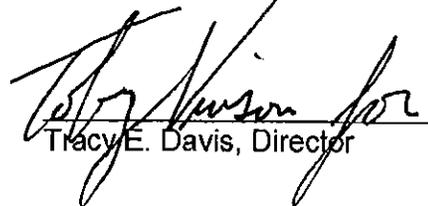
Mr. Davis thanked staff for their efforts.

Remarks by the Commission -- None

Remarks by the Chair -- Ms. Smith thanked staff for their continued efforts. She thanked Mr. Nevils for his contributions.

Adjournment -- Ms. Deck made a motion to adjourn the meeting. Mr. Bivens seconded the motion, and it was approved unanimously. As there was no further business, Ms. Smith adjourned the meeting.


Stephanie Lane, Recording Secretary


Tracy E. Davis, Director

MINUTES OF SPECIAL TELECONFERENCE MEETING OF THE
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

June 5, 2013
Archdale Building, Fifth Floor Conference Room
Raleigh, North Carolina

The North Carolina Sedimentation Control Commission met in special session on June 5, 2013 at 9:00 a.m. via teleconference. The following persons were in attendance for all or part of the meeting:

COMMISSION MEMBERS

Ms. Robin K. Smith (Chair)
Ms. Charlotte Mitchell
Mr. Jonathan Bivens
Mr. Joe Glass
Mr. Randy Veltri
Dr. Rich McLaughlin
Mr. Tommy Anderson
Mr. Rob Weintraub

OTHERS

Mr. Tracy Davis, DEMLR Director
Ms. Debra Godwin, Administrative Assistant
Mr. Shawn Maier, Assistant Attorney General

PRELIMINARY MATTERS

Chair Smith called the meeting to order and read the Ethics Statement and asked if there were any conflicts of interest. There were none.

Those in attendance via teleconference introduced themselves.

ACTION ITEMS

Resolution of Appreciation – Chair Robin Smith

Chair Smith stated that the purpose of the specially called meeting was to approve a Resolution of Appreciation for retiring Land Quality Section Chief Francis "Mell" Nevils, Jr. She advised that once the resolution is approved, Mr. Nevils will be presented the resolution on an engraved plaque at his retirement party.

Mr. Davis noted that the word "exemplary" was misspelled and needed to be corrected.

Mr. Glass questioned the reason Mr. Nevils' nickname "Mell" was made a part of the Resolution, being that it is a formal document. Mr. Davis stated that Mr. Nevils prefers not to use his first name and has always been addressed as "Mell". It was the general consensus of the Commission that the name on the Resolution remains as drafted.

Dr. McLaughlin made a motion, seconded by Mr. Veltri, to approve the Resolution of Appreciation as amended. The vote was unanimous. The approved Resolution is attached to these minutes.

INFORMATION ITEMS

Mr. Davis advised the Commission that Mr. Nevils would be retiring effective July 1, 2013, with his last day being June 28. A retirement celebration is being planned for Tuesday, June 18, 2013 from 2-4 pm. Mr. Davis noted that the Commission would receive a formal invitation and requested that they attend the celebration, if possible.

Dr. McLaughlin noted that he could not attend the celebration so he intends to prepare a letter to Mr. Nevils. Dr. McLaughlin requested that staff present the letter to Mr. Nevils during the celebration. Mr. Davis agreed to read and present the letter to Mr. Nevils at the event.

CONCLUSION

Remarks by the Director -- None

Remarks by the Commission -- None

Remarks by the Chair: Chair Smith asked about the process of hiring a replacement for Mr. Nevils' position. Mr. Davis stated that staff was in the process of composing the job posting. The posting would be available to internal candidates within DENR. His hope is to have the position close within one week and interview the next week so as to limit the amount of time of having an Acting Section Chief.

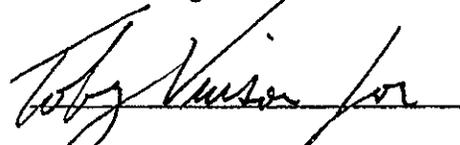
Chair Smith inquired as to who would serve on a temporary basis as the Acting Section Chief until the position is filled. Mr. Davis stated that he is uncertain at this time but it may be Toby Vinson who has been working closely with Mr. Nevils in overseeing Land Quality Section operations since November.

Adjournment -- Following discussion regarding Mr. Nevils retirement plans, Mr. Glass made a motion, seconded by Dr. McLaughlin, to adjourn the meeting. The vote was unanimous.

As there was no further business, Ms. Smith adjourned the meeting at 9:20 am.



Debra W. Godwin, Administrative Asst.



Tracy E. Davis, Director, DEMLR