

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
November 14, 2012
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 14, 2012 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

Dr. Michael Voiland, Vice-Chair
Mr. Joe Glass (via telephone)
Mr. Jonathan Bivens
Ms. Heather Deck
Mr. Kevin Martin
Mr. Randy Veltri
Mr. Rob Weintraub
Mr. Tom Anderson

OTHERS

Mr. Tracy Davis, Director, Division of Energy, Mineral & Land Resources
Mr. Gray Hauser, State Sedimentation Specialist, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Mr. Toby Vinson, Chief Engineer, Land Quality Section
Mr. Mell Nevils, Section Chief, Land Quality Section
Mr. Matt Poling, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Mr. John Payne, Assistant Attorney General
Mr. Shawn Maier, Assistant Attorney General
Mr. Don Lee, NC Department of Transportation
Mr. Johnnie Marion, NC Department of Transportation
Mr. Ricky Greene, NC Department of Transportation
Mr. Jon Nance, NC Department of Transportation
Mr. David Harris, NC Department of Transportation
Mr. Terry Gibson, NC Department of Transportation
Dr. Jean Spooner, NCSU
Mr. Barry Edwards, Catawba County
Mr. Jack Chandler, Catawba County
Mr. David Pond, W.K. Dickson
Mr. Billy Royal, W.K. Dickson
Mr. Kirk Stafford, Town of Cary
Ms. Lauren Witherspoon, City of Raleigh
Mr. Ben Brown, City of Raleigh

PRELIMINARY MATTERS

Dr. Voiland called the meeting to order and read Executive Order No. 1.

Those in attendance introduced themselves.

Dr. Voiland asked for a motion to approve the minutes from the August 23, 2012 meeting.

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

ACTION ITEMS

NCDOT Annual Review -- Mr. Gray Hauser

The Land Quality Section reviewed the program delegation to the North Carolina Department of Transportation (NCDOT) on September 24-26, 2012. A copy of the NCDOT Annual Review Report to the SCC is attached to the original minutes.

Mr. Hauser summarized the review of 16 NCDOT projects (8 Western NC / 8 Eastern NC). The projects selected for review were a mix of contract construction, design-build and maintenance projects across the state. Projects were generally between 30 and 70 percent complete. Twelve contract construction or design-build projects, and four maintenance/force account projects were chosen based on the stage of construction and the significance of the project.

Mr. Hauser discussed the inspection process utilized by the NCDOT Roadside Environmental Unit (REU). Weekly inspections are performed by the project inspector, and after ½ inch of rainfall. REU Operations staff inspect the projects monthly. The projects are evaluated on a scale of 1-10. A score of 6 or less results in issuance of an Immediate Corrective Action report (ICA). The REU project ratings seemed to be reasonably consistent with those of the Land Quality Section.

Some projects received fair ratings. The Rutherford County project received a fair+ overall rating, due to issues with ground cover on fill slopes. One project in Jones County had an issue with turbid water in the work zone, which occurred when the approach fill and turbidity curtain gave way.

Mr. Hauser discussed an issue with some skimmers used by NCDOT that dewater at a rapid rate. Proper installation of restrictor orifices was emphasized. Concerns were expressed on the consistency of providing ground cover on steep slopes. Two additional problems were discussed related to Design-Build projects evaluated during summer 2012: 1) inadequacy of erosion and sediment control plans prepared by private design firms, and 2) failure to install basins that dewater from the surface or have porous baffles. Mr. Hauser indicated the REU needs to be able to require the

same compliance standards as a Land Quality Section (LQS) inspector, while visiting a project. The LQS staff has the authority to request a revised plan or additional measures if needed, and the NC DOT delegated program should have the same ability. He added that NCDOT should revise the plan approval process for design-build projects to ensure adequate time for a thorough plan review.

NCDOT Report on Delegated Program -- Mr. Don Lee

Mr. Lee discussed the process for issuing an ICA. The ICA is used as a warning to get issues corrected quickly. Calibrations are conducted throughout the year to ensure ratings are consistent with LQS.

Mr. Weintraub indicated his concern is whether NCDOT is being held to the same standard as the local delegated programs, with respect to situations such as sediment loss in streams. Mr. Lee indicated NCDOT has guidelines in place for sediment loss with various levels of severity. The goal of NCDOT is to maintain compliance and keep development moving.

Mr. Lee indicated NCDOT is working with another manufacturer to resolve the issue with surface dewatering devices. Additional models are under evaluation to ensure the best method for water quality is used on the projects.

Mr. Lee discussed issues encountered with design-build projects. A committee has been established to evaluate the specifications to address the effectiveness of the process. NCDOT now requires the original designer to visit projects every 30 days to address erosion control plan issues. Additional changes have been made regarding plan submittal. The ICA process has been revised to include protocol for an Erosion Control Plan Audit Request (ECPAR). Inadequate plans will be evaluated in order to be revised for re-submittal.

Mr. Lee summarized the NCDOT annual report. A copy of the report to the SCC is attached to the original minutes.

Mr. Gibson expressed the importance of the delegated authority to NCDOT. The design-build issues are a concern, and steps are being taken to improve. More training is planned to ensure the program is effective.

Mr. Nevils recommended continued delegation of the program. Mr. Martin made a motion to continue delegation of the program, which was seconded by Mr. Anderson.

Ms. Deck suggested modifying the motion to include staff recommendations.

Mr. Martin modified the motion to continue delegation of the program with implementation of staff recommendations. Mr. Anderson seconded the motion and it was approved unanimously.

Local Program Reviews -- Mr. Matthew Poling

Mr. Poling reported on the reviews of Chatham, Forsyth, Gaston and Catawba Counties and the Cities of Burlington, Raleigh, Monroe and the Town of Holly Springs delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Chatham County - On August 30, 2012, Karyn Pageau, John Holley, and Matt Poling conducted a review of the Chatham County Local Program.

Staff recommended continued delegation with the following recommendations to improve the program:

- 1) Continue requiring that adequate ground cover is provided within the time limits of the local ordinance and approved plan.
- 2) Continue to check for self-inspection records on site.

Mr. Veltri made a motion for continued delegation and was seconded by Mr. Weintraub.

Mr. Glass asked whether a NOV had been issued to any of the projects reviewed. Mr. Poling indicated CD Development had received a NOV, but was in compliance at the time of review.

Dr. Voiland called for a vote on the motion made by Mr. Veltri. The motion was approved unanimously.

Mr. Martin suggested a comprehensive vote for the six remaining programs, currently recommended for continued delegation.

Mr. Weintraub made a motion for continued delegation of Forsyth and Gaston Counties and the Cities of Burlington, Raleigh, Monroe and the Town of Holly Springs. Mr. Martin seconded the motion.

Ms. Deck asked whether staff had received an update from Forsyth County on the four sites that were not in compliance. Mr. Poling indicated the County had submitted updates on the projects, which have achieved compliance.

The motion to continue delegation for the six programs was approved unanimously, based on the recommendations from staff: See attached Local Program Report.

Catawba County - On October 29, 2012, Matt Poling, Ryan Kormanik, Zahid Khan and Gray Hauser conducted a review of the Catawba County Local Program. Currently the County has 16 active projects.

The Catawba County program was placed on probation at the May 24, 2012 meeting of the Sedimentation Control Commission. A follow-up review was conducted on August 1, 2012, shortly after an injury to the County engineer responsible for the program. The

County has responded by adjusting the duties of existing staff and contracting with W. K. Dickson to provide engineering services for plan review and site inspection. Erosion control plan reviews, sedimentation inspection reports, record keeping and enforcement procedures have greatly improved.

Land Quality staff recommended that W. K. Dickson should supply the County with a list of its clients, and not review any plans submitted by its clients. The County will be submitting an amended erosion control ordinance to the SCC for approval. Authority to suspend building inspections for sites that are out of compliance, and issuing a Conditional Certificate of Occupancy when permanent ground cover has not been established are recommended amendments to the ordinance. Plans should be required for any group of lots within a subdivision owned by the same person when the cumulative land disturbance will be one acre or greater in area.

Staff recommended removing Catawba County from probation and continued delegation of the erosion and sediment control program with the following recommendations to improve the program:

- 1) Continue requiring that adequate ground cover is provided within the time limits of the local ordinance and approved plan.
- 2) Continue to check for self-inspection records on site.

Mr. Weintraub asked who reviews plans when W.K. Dickson has a conflict of interest with a client. Mr. Poling indicated the County Engineer is responsible for review.

Mr. Nevils indicated the LQS has always been hesitant to allow private engineers to conduct reviews for delegated programs because of the potential for conflicts. He added the LQS regional office could conduct reviews, when the County Engineer is not available. The LQS reviews would be on a case by case basis, until other arrangements could be made by the County.

Mr. Martin asked whether contracting with W.K. Dickson was permanent or only an interim solution until staffing is available. Mr. Barry Edwards (Catawba County Utilities & Engineering Director) addressed the Commission and indicated it is an interim solution. He added plans not reviewed by W.K. Dickson would be overseen by him. Any issues encountered would be directed to the Mooresville Regional Office for assistance.

Mr. Martin asked the frequency of review for continued delegation. Mr. Hauser indicated the reviews take place every two years. Mr. Martin added updates are needed from the County regarding ordinance changes and staffing in less than two years.

Mr. Martin made a motion to remove Catawba County from probation and continue delegation, contingent upon staff recommendations, with an additional review within one year. Ms. Deck seconded the motion.

Mr. Weintraub asked staff to evaluate the effectiveness of contracting services for plan review with a private firm during the next review of the program. It may be a process that could be recommended in the future. Mr. Hauser indicated staff would conduct the evaluation as a part of the review. He added Rowan County experienced similar staffing issues in the past, and had success with contracted services on a temporary basis.

Mr. Nevils indicated there is a limited program delegation option in the SPCA involving plan review by LQS. He added contracted firms are possible, but there must be transparency in order to avoid the appearance of a conflict of interest.

Dr. Voiland called for a vote on the motion made by Mr. Martin. The motion 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. Gaston, Pitt, and Rowan Counties, the Cities of Greenville and Monroe, and the Towns of Apex, Holly Springs, Kitty Hawk, Lake Lure, Nags Head, and Wake Forest have signed the MOA and request agreement by the SCC.

Mr. Weintraub asked whether the MOAs have been reviewed and are acceptable. Mr. Maier, Counsel for the Commission, indicated the MOAs are all acceptable.

Mr. Bivens made a motion to approve the MOAs. Mr. Weintraub seconded the motion, and it was approved unanimously.

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

Mr. Hauser indicated the amendments have been reviewed by staff. Modifications were made to require erosion control plans based on size and slope. The ordinance also changed the appeals option from 30 to 60 days for hearings.

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

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

Schedule for SCC Meetings in 2013 -- Mr. Gray Hauser

Mr. Hauser presented the following proposed dates for the 2013 Sedimentation Control Commission meetings:

February 28, 2013

May 16, 2013
August 15, 2013
November 7, 2013

Mr. Martin made a motion to accept the SCC meeting dates in 2013. The motion was seconded by Ms. Deck, and it was approved unanimously.

INFORMATION ITEMS:

2012 Report to the Environmental Review Commission -- Mr. Tracy Davis presented a power point that summarized the 2012 Report to the Environmental Review Commission submitted by the Division of Energy, Mineral, and Land Resources (DEMLR). The challenges with abandoned sites, lack of bonding, and reductions of staff were discussed. Program statistics and budget issues were described to the ERC, including DEMLR recommendations. A copy of this power point and report are attached to the original minutes.

Report on Local Program Assistance by Regional Offices -- Mr. Gray Hauser presented a report on Regional Office Contact with Town of Beech Mountain. A copy of this report is attached to the original minutes.

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

Mr. Payne gave an update on recent events in a civil case: Applewood Properties and Applecreek Executive Golf Club versus Hunter Construction. The AG's office argued that the SPCA is a preventative tool, not just to prevent offsite sediment into waterways but also adjacent land. The issue of imminent damage resulting from offsite sediment was discussed. This was done in an effort to oppose a ruling which could prevent LQS from assessing a civil penalty if offsite sediment loss is not within a waterway.

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. A copy of this report is attached to the original minutes.

Education Program Status Report -- Ms. Lowery-Jacobs presented a report 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.

Land Quality Section Report -- Mr. Nevils provided a report on the current number of vacancies in the Section and other LQS activities and issues. Updates were provided

on the efforts of the new Mining and Energy Commission.

CONCLUSION

Remarks by the Director -- Mr. Davis thanked staff for their efforts throughout the year. He discussed preparation by staff for the new administration transition team. Mr. Davis announced the retirement of Robin Smith (Assistant Secretary) effective December 31, 2012.

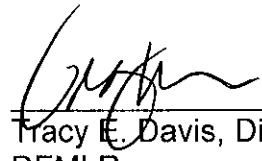
Remarks by the Commission -- None

Remarks by the Chair -- Dr. Voiland announced his retirement from NCSU effective January 1, 2013. He thanked staff for their efforts, and expressed appreciation to the Commission. Dr. Susan White will be the new Director of WRRRI and the NC Sea Grant Program.

Adjournment -- Mr. Martin made a motion to adjourn the meeting. Mr. Veltri seconded the motion, and it was approved unanimously. As there was no further business, Dr. Voiland adjourned the meeting at approximately 12:45 p.m.



Stephanie Lane, Recording Secretary



Tracy E. Davis, Director
DEMLR