

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
August 15, 2013
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on August 15, 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
Mr. Randy Veltri
Mr. Tommy Anderson
Ms. Heather Jacobs Deck
Ms. Charlotte Mitchell
Mr. Charles Hughes

OTHERS

Mr. Toby Vinson, Chief Engineer, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Mr. Gray Hauser, State Sedimentation Specialist, Land Quality Section
Mr. Tracy Davis, Director, DEMLR
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section
Mr. Jim Simons, DEMLR
Mr. John Holley, Land Quality Section
Ms. Ashley Rodgers, LQS, RRO
Mr. Shawn Maier, Assistant Attorney General
Mr. John Payne, Assistant Attorney General
Dr. Susan White, WRRRI
Mr. Ross Smith, Potash Corp – PCS Phosphate, Co., Inc.
Mr. Jacob Wiseman, NCSU – Soil Science
Mr. Mike Randall, Stormwater Program
Mr. Chris Pullinger, DEMLR – RRO
Mr. Dave Parnell, DEMLR – RRO
Mr. Kirk Stafford, Town of Cary

PRELIMINARY MATTERS

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

Mr. Anderson expressed a potential appearance of conflict of interest with issues related to the City of Jacksonville and recused himself from voting on the Memorandum of Agreement.

Those in attendance introduced themselves.

Ms. Smith asked for a motion to approve the minutes from the May 16 and June 5, 2013 meetings. The motion to approve the minutes was made by Mr. Glass. Ms. Deck seconded the motion, and it was approved unanimously.

Ms. Smith indicated the agenda would be amended to include reading the Statement of Economic Interest for Mr. Charles Hughes.

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

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Mr. Charles W. Hughes from the State Ethics Commission. There was a potential for a conflict of interest. Mr. Hughes will fill the role of a representative of the Soil and Water Conservation Commission. He is the Supervisor of the Lenoir Soil and Water Conservation District, which may come before the Sedimentation Control Commission. As such, he should exercise appropriate caution in the performance of his public duties should issues regarding the Lenoir Soil & Water Conservation District come before the Sedimentation Control Commission for official action.

ACTION ITEMS

Local Program Reviews -- Mr. Gray Hauser

Mr. Hauser gave a report on the reviews of Macon, Orange, Watauga, and Avery Counties, the Towns of Highlands, Kitty Hawk, Kill Devil Hills, Nags Head and Boone delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Macon County -- On April 30, 2013, Wayne Watkins, Laura Herbert, and Matt Poling conducted a review of the Macon County Local Program. Two staff members contribute two full time equivalents to the erosion control program. The County requires surety bonds for sites over 5 acres. The County has 6 active projects and has reviewed 2 plans, with 2 approvals and no disapprovals. The County has conducted 360 inspections, issued 8 notices of violation, no civil penalties, and 1 stop work order in the past 12 months. Five projects were reviewed. Three projects were in compliance and two were under Notices of Violations (NOV). The County was handling the NOV projects appropriately.

The local program should implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.

Staff recommended continued delegation.

Mr. Weintraub asked whether the report was correct in indicating two full time equivalents for six active projects. Mr. Hauser indicated the two employees do not inspect sediment and erosion control projects full time.

Mr. Glass made a motion for continued delegation. Mr. Veltri seconded the motion, and it was approved unanimously.

Town of Highlands -- On May 1, 2013, Matt Poling conducted a review of the Town of Highlands Local Program. One person contributes one-quarter of a full time equivalent to the erosion control program. The Town has two active projects and has reviewed one plan, with one approval and no disapprovals in the past year. Two projects were evaluated. Both projects were in compliance.

The local program should implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.

Staff recommended continued delegation.

Ms. Deck made a motion for continued delegation. Mr. Anderson seconded the motion, and it was approved unanimously.

Town of Nags Head -- Gray Hauser conducted a review of the Town of Nags Head delegated local program on May 8, 2013. Based on monthly activity reports, the Town approved 12 erosion control plans, conducted 30 inspections, issued one Notice of Violation and two Stop Work Orders in 2012, and has approved 4 plans and conducted 8 inspections in the first 3 months of 2013. The Town has three active projects greater than one acre, and one person spends about 10-15 percent of his time on administering the erosion control program. Two of the projects were in compliance, and the third needed maintenance of silt fence.

Staff recommends continued delegation.

Ms. Mitchell asked who is responsible for conducting inspections. Mr. Hauser indicated one staff person, performing multiple jobs, conducts the inspections.

Mr. Bivens made a motion for continued delegation. Ms. Deck seconded the motion, and it was approved unanimously.

Town of Kitty Hawk -- Gray Hauser conducted a review of the Town of Kitty Hawk delegated local program on May 8, 2013. Based on monthly activity reports, the Town approved 22 erosion control plans and conducted 132 inspections in 2012, and has approved 4 plans and conducted 52 inspections in the first 4 months of 2013. Four projects were evaluated, one of which was greater than one acre in area. Two of the projects were in compliance, and two had minor issues. The constant wind in the area tears silt fence off its posts, requiring frequent repairs.

The following recommendations were made to the Town of Kitty Hawk:

- 1) Submit your monthly activity reports every month.
- 2) Projects one acre or greater in disturbed area should be evaluated for coverage under the NPDES General Stormwater Permit for Construction Activities, NCG 010000. Be sure to include the proper language in the Letter of Approval when you do have a project of one acre or more.
- 3) A more stringent construction detail for silt fence in areas of high wind appears warranted. Silt fence stapled to wooden posts was inadequate. Wooden posts shall be a minimum of 2" X 2" oak or ash hardwood. A 1/4" X 2" batten strip nailed over the fabric has proven effective at other sites in keeping the fabric from tearing off posts.

Staff recommends continued delegation.

Mr. Veltri made a motion for continued delegation. Mr. Glass seconded the motion, and it was approved unanimously.

Town of Kill Devil Hills -- Gray Hauser conducted a review of the Town of Kill Devil Hills delegated local program on May 9, 2013. Based on monthly activity reports, the Town approved one erosion control plan and conducted 8 inspections in 2013. The Town currently has no active projects greater than one-half acre in size, and has not approved any plans or conducted inspections in the first 4 months of 2013. Three persons contribute to the administration of the erosion control program. Several single family residence sites were observed in the field, and no sedimentation damage was observed.

The following recommendation was made to the Town of Kill Devil Hills:

Projects one acre or greater in disturbed area should be evaluated for

coverage under the NPDES General Stormwater Permit for Construction Activities, NCG 010000. Be sure to include the proper language in the Letter of Approval when you do have a project of one acre or more. A Letter of Approval should always be sent to the financially responsible party or landowner, with a copy to the plan designer. An example is enclosed. The NPDES Permit, Combined Self-Monitoring Form and Certificate of Plan Approval should be enclosed with the Letter of Approval, assuming the plan meets the requirements of the NPDES Permit.

Staff recommends continued delegation.

Ms. Deck indicated, for the record, the report should refer to inspections conducted in 2013.

Ms. Deck made a motion for continued delegation. Mr. Bivens seconded the motion, and it was approved unanimously.

Orange County -- On July 17, 2013, Joe Dupree, Karyn Pageau, and Matt Poling conducted a review of Orange County's Local Program. Three positions contribute three full time equivalents. However, two of those positions are currently vacant. The county has 38 projects, 18 of which are sites that are greater than an acre. The County has reviewed 38 plans, with 38 approvals and no disapprovals. The County has conducted 508 inspections, issued 3 notices of violations, no civil penalties, and 2 stop work orders in the past 12 months. Five projects were evaluated, all of which were in compliance.

The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.

Staff recommends continued delegation.

Ms. Smith asked if the local programs are submitting monthly data on a regular basis to track inspection frequency and NOVs issued. Mr. Hauser indicated the major programs typically submit monthly, while others send multiple months at once. Monthly report submittal is discussed with local program staff during the scheduled reviews.

Ms. Smith asked if the self-inspection reports are being reviewed by the local programs. Mr. Hauser indicated the local programs that he reviewed were doing a good job with checking self-inspection records.

Ms. Deck asked if Orange County plans to hire staff for the vacant positions. Mr. Hauser indicated additional staff will likely be hired.

Mr. Anderson made a motion for continued delegation. Mr. Bivens seconded the motion, and it was approved unanimously.

Watauga County -- On July 23, 2013, Tim Latham and Matt Poling conducted a review of Watauga County Local Program. One staff member contributes one-third of a full time equivalent to the erosion control program. The County has 25 projects and has reviewed 10 plans, with 10 approvals and no disapprovals. The County has conducted 137 inspections, issued one notice of violations, and no civil penalties in the past 12 months. Five projects were evaluated. Three were in compliance, two had violations.

The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.
- 4) If sites remain out of compliance for extended periods of time, Watauga County should seek to hold building permits in order to regain compliance.

Staff recommends continued delegation.

Ms. Smith asked if a NOV was ever issued for the non-compliant sites. Mr. Hauser indicated none of the sites involved buffer zone violations, or failure to retain sediment on the tract. The violations included maintenance of measures on the site.

Ms. Smith asked why a NOV is not issued when a site is out of compliance. Mr. Hauser indicated a NOV is usually issued when there is sedimentation damage to a stream or off of the property. The sites visited during the review had measures with maintenance issues or were inadequate for the project.

Mr. Glass made a motion for continued delegation. Mr. Veltri seconded the motion, and it was approved unanimously.

Avery County -- On July 24, 2013, Kristin Hicklin and Matt Poling conducted a review of Avery County Local Program. One staff member contributes one-third of a full time equivalent to the erosion control program. The county has 6 projects and has reviewed 6 plans, with 6 approvals and no disapprovals. The County has conducted 58 inspections, issued 1 notice of violations, and 1 civil penalty in the past 12 months. Five projects were evaluated. Three were in compliance, two had violations.

The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.
- 4) If sites remain out of compliance for extended periods of time, Avery County should seek to hold building permits in order to regain compliance.

The Wilderness Trails site was not inspected during this review. Avery County was asked to provide the SCC a written status report on the site before the August 15, 2013 meeting.

Staff recommended continued delegation.

Mr. Hauser mentioned Hickory Nut Campground which was out of compliance, due to inadequate buffer zone. He added a recommendation was made, during the review, to issue a NOV for the site. Avery County issued the NOV and conducted a follow-up inspection. Progress has been made by the owner to correct issues on the site.

Ms. Smith asked if DWQ had been contacted to address the offsite sediment. Mr. Hauser indicated DWQ has been aware of the project for some time, but has not initiated any enforcement action on the site.

Mr. Bivens asked when the last inspection had been done, prior to the review. Mr. Hauser was not aware of the date for the inspection, but indicated the area has received a great deal of rain. Ms. Smith asked for the last inspection dates to be included in future reports.

Ms. Deck made a motion for continued delegation, and suggested including a comment in the letter to encourage Avery County to issue a NOV on sites with offsite sediment. Mr. Anderson seconded the motion, and it was approved unanimously.

Town of Boone -- On July 25, 2013, Tim Latham and Matt Poling conducted a review of the Town of Boone Local Program. One staff member contributes one-third of a full time equivalent to the erosion control program. The Town has 7 projects, 4 of which are active, and has reviewed 12 plans, with 7 approvals and 5 disapprovals. The Town has conducted 60 inspections, issued 2 notices of violations, and 2 civil penalties in the past 12 months. Five projects were evaluated. Three were in compliance, two had violations. One project was a public utility with the power of eminent domain, which will be transferred to Land Quality (Winston-Salem Regional Office). Two of the approved plans were inadequate for all phases of grading.

The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.
- 4) Invite staff from the Winston Salem Regional Office to come and participate in the review of complex plans.
- 5) If sites remain out of compliance for extended periods of time, the Town of Boone should seek to hold building permits in order to regain compliance.

Staff recommends continuing the review of the local program for an additional three months, with a follow-up report at the November SCC meeting.

Ms. Smith asked if the delegated program has adequate staffing. Mr. Hauser indicated some staff has been shifted in the office, requiring performance of additional job duties.

Mr. Weintraub asked if any action on this delegation is required by the Commission. Mr. Hauser requested a motion that indicates concern of the Commission about the efficiency of the local program.

Ms. Deck made a motion for staff to continue review of the Town of Boone's local program with a report presented at the November SCC meeting. Mr. Veltri 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. Orange and Henderson Counties, the Cities of Archdale and Jacksonville, the Town of Kill Devil Hills, and the Village of Whispering Pines signed the MOA and request agreement by the SCC.

Mr. Bivens made a motion to approve the MOAs for Orange and Henderson Counties, the City of Archdale, the Town of Kill Devil Hills, and the Village of Whispering Pines. The motion was seconded by Mr. Veltri, and it was approved unanimously.

Ms. Deck made a motion to approve the MOA for the City of Jacksonville. The motion was seconded by Mr. Veltri, and it was approved unanimously. (Mr. Anderson recused himself from voting.)

Mr. Weintraub asked how many local programs have signed MOAs. Mr. Hauser indicated 36 have been signed. He added Mr. Poling will continue to encourage local programs to complete the document, and submit to the SCC.

INFORMATION ITEMS:

Update on DENR Reorganization -- Mr. Davis presented an update on current DENR and DEMLR Reorganization activities. A copy of the DENR and DEMLR Organization Charts referred to during his remarks are attached to the original minutes.

Legislative Update -- Mr. Maier provided a report on 2013 session laws and bills related to the SPCA.

The following bills did not move forward in the legislature:

- **Senate Bill 507 – Eliminated Outdated Environmental Reports**
The bill eliminated the annual mining report submitted by DEMLR 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 forfeiture fund. However, this same language from HB94 has been incorporated into HB74, which has passed the legislature and is waiting to be signed by the Governor.
- **Senate Bill 127 – Economic Development Modifications**
The bill reorganizes the regional offices to align multiple permitting agencies.
- **House Bill 779 -- LRC Study Infrastructure/Foreclosed Property**
The bill requires bonding for sites over one acre. The second version was changed to a study bill.
- **Senate Bill 612 -- Regulatory Reform Act of 2013**
The bill creates a fast track permitting process for erosion control plans, and preempts local governments from ordinances more restrictive than state requirements. A version of this bill was included in HB480, without the inclusion of erosion control plans, which was passed by the legislature and signed by the Governor.
- **Senate Bill 10/House Bill 1011 -- Government Reorganization Efficiency Acts**
The bill reorganizes a number of Commissions. Language, regarding the Environmental Management Commission (EMC) and Coastal Resources Commission, was incorporated into SB402 (The Appropriations Act).

The following bills have been signed by the Governor:

- **Senate Bill 402 -- The Appropriations Act**

All the terms of members of the EMC were ended effective July 31, 2013, including seats on additional boards. As a result, the appointment of the current EMC representative on the SCC has been terminated. The replacement has not been appointed.

- Senate Bill 36 --
The bill made changes to the Administrative Procedures Act, regarding the process for posting notices of proposed rules.
- Senate Bill 76 – Domestic Energy Jobs Bill
The bill includes a study portion, which allows the MEC to investigate the possibility of a coordinated oil and gas permit. This process would include all aspects of the mining operation, including the erosion and sedimentation control plan.
- Senate Bill 279 -- Transfer Environmental Permits
The bill allows the Division/Local Programs to transfer permits to a successor in interests, without the consent of the original permit holder. The Division/Local Programs have no authority to change terms of the permit, but they are allowed to require a revised plan if necessary.
- House Bill 480 -- Environmental Permitting Reform
The bill requires a fast track permit process for stormwater management systems. The erosion and sedimentation control language was removed from the bill.
- House Bill 74 -- Regulatory Reform Act
The bill includes the following requirements:
 - a) Increases the threshold for fiscal notes from \$500,000 to \$1,000,000.
 - b) Requires a periodic review of existing rules, including an automatic expiration for those not reviewed within 10 years. Rules which were implemented to conform to federal law are exempt. The guidelines for review are set by the Rules Review Commission (RRC).
 - c) Restricts cities and counties from enacting an ordinance that regulates a field that is also regulated by a state or federal statute enforced by an environmental agency.
 - d) Clarifies the authority of a local government under the SPCA. A notice of assessment is required to be paid or contested by filing a petition for hearing with the local program. Civil penalties collected shall be remitted to the Civil Penalty Forfeiture Fund (CPFF).
 - e) Directs DENR, in conjunction with the Department of Transportation, Health and Human Services, and local governments to study their internal processes for review of applications and plans for approval. The findings will be reported to the Environmental Review Commission for recommended legislative changes.

Mr. Weintraub asked if the recent legislation requires the Memorandum of Agreement with local programs to be revised. Mr. Hauser indicated the MOA would not need to be revised.

Ms. Deck asked if local governments have been able to keep civil penalties in the past. Mr. Hauser indicated the NC Supreme Court ruled that to be unconstitutional, and the model ordinance directs the penalties to be submitted to the CFFF.

Ms. Smith made the Commission aware of the possibility for additional Commission responsibilities in response to recent legislation. Mr. Vinson indicated staff is waiting to receive the schedule for rules review, and suggested the Commission form a committee to work with DEMLR staff to review the rules under the SCC's purview. Mr. Davis added staff will begin an initial review of rules in the interim.

Electronic Permitting and Inspection Update -- Mr. Vinson presented the progress report on the program development for electronic plan review and mobile inspections.

Mr. Glass asked if any notification has been sent to design consultants regarding the electronic permitting process. Mr. Vinson indicated the process will be advertised through the regional offices, workshops, and newsletter once the system has been developed, tested and readied for implementation.

Report on Local Program Assistance by Regional Offices -- Mr. Hauser presented a report on Regional Office Contacts with the Counties of Catawba, Lincoln, Rowan, and New Hanover, and the Cities of Charlotte, Monroe, Greenville, Burlington, and Raleigh. A copy of this report is attached to the original minutes.

Mr. Glass asked how local programs will be effected by the requirement in HB74 concerning review of applications submitted by professional engineers. Mr. Hauser indicated the bill requires a study of the issue, and there does not appear to be an immediate impact. The challenge will be coordinating data collection from local programs to report to the ERC.

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.

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 the 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. Vinson provided a report on the LQS current plan approval, inspection, and enforcement activities statewide.

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

CONCLUSION

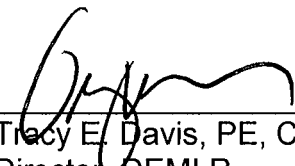
Remarks by the Director -- Mr. Davis thanked the staff for their efforts. He reported that the Section Chief position formerly held by Mr. Nevils has been advertised, and closes on August 16, 2013. He also stated that the Stormwater Group and Energy Office have joined DEMLR. He will be working with NCDENR Administration on Division reorganization, including preparation of the Division's next six month goals.

Remarks by the Commission -- Mr. Glass noted that Mr. Davis was recently recognized as the Government Engineer of the Year by the Professional Engineers of NC, and also received the Professional Engineer in Government Achievement and Service in the United States (PEGASUS) Award by the National Society of Professional Engineers.

Remarks by the Chair -- Ms. Smith recognized the contribution Mr. Kevin Martin has made to the SCC, and is optimistic he will be reappointed to both the EMC and the corresponding/crossover SCC seat. She also thanked staff for their efforts.

Adjournment -- Mr. Glass 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 at approximately 12:35 pm.


Stephanie Lane, Recording Secretary


Tracy E. Davis, PE, CPM
Director, DEMLR