

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
May 17, 2011
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 17, 2011 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 (via teleconference)
Mr. Joe Glass
Dr. Bill Miller
Mr. Robert Weintraub
Mr. Tommy Esqueda
Dr. Michael Voiland
Ms. Elaine Chiosso
Mr. Ricky Vick
Dr. Rich McLaughlin
Mr. Kevin Martin
Mr. Randy Veltri
Mr. Manly West

OTHERS

Mr. Jim Simons, Director, Division of Land Resources
Mr. Gray Hauser, State Sedimentation Specialist, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Mr. Mell Nevils, Section Chief, Land Quality Section
Mr. Tracy Davis, Chief Engineer, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Mr. Rufus Allen, Assistant Attorney General
Mr. John Payne, Assistant Attorney General
Mr. Kirk Stafford, Town of Cary
Ms. Mary MacClean Ashill, SELC
Ms. Cathy Smith, NCSU
Mr. Brian O. Sullivan, City of High Point

PRELIMINARY MATTERS

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

Dr. Voiland and Rich McLaughlin recused themselves from Action Item D, Proposed Education Projects.

Those in attendance introduced themselves.

Ms. Smith called for approval of the minutes for the February 17, 2011 meeting.

Mr. Glass questioned the action taken by Commission on Request from Idaho DOT, which was not reflected in the minutes. Mr Nevils indicated he had spoken with Idaho DOT regarding the exchange of information. Mr. Hauser indicated no action was needed by the Commission because the request was for public information. Mr. Glass indicated the record should reflect closure of action item. Chairman Smith indicated minutes should be modified to reflect this correction.

The motion to approve the minutes with suggested correction was made by Kevin Martin. Elaine Chiosso seconded the motion, and it carried unanimously.

ACTION ITEMS

Election of Vice-President for Chairman – Ms. Robin Smith

Dr. Voiland was nominated as Vice-Chairman for the Commission. Mr. Glass moved to approve the nomination, which was seconded by Mr. West. The motion was approved unanimously.

Chairman Smith authorized Dr. Voiland to preside during the rest of the meeting, since she was participating via teleconference.

Local Program Reviews - Mr. Gray Hauser

Mr. Hauser reported on the reviews of the Jackson and Watauga County delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Jackson County

The Jackson County Local Program was previously reviewed on September 21, 2010. The program had some inadequacies at that time. That information was brought to the SCC last November at which time a decision was made to defer action and to continue the review until February. Weather delayed the review to April 7, 2011. Staff reviewed problematic sites. The program writes sufficient reports and notices but will need a little assistance with enforcing groundcover on steep slopes.

Staff recommended continued delegation with quarterly assistance from the Asheville Regional Office (ARO).

Mr. Glass was concerned that the ARO would not be able to assist them properly if only

required to do so quarterly. Mr. Hauser explained that when a plan was submitted to the Program they would inform the ARO and assistance would be provided as needed. Dr. McLaughlin raised a question about what Mr. Hauser considered "good groundcover". Mr. Hauser explained it is cover sufficient to restrain erosion, with a uniform vegetative groundcover with a density of at least 70 to 80%.

Dr. Miller made a motion to continue delegation of the program with quarterly assistance from ARO, which was seconded by Mr. Vick and carried unanimously.

Watauga

The Watauga County Local Program was previously reviewed on August 26, 2010. Staff of the Local Program at that time was not able to carry out their duties properly. Mr. Hauser recommended working with the Program to get them back up to speed over the winter. The Winston-Salem Regional Office (WSRO) worked diligently with the Program. Mr. Hauser conducted another review on April 28, 2011 and found the record keeping was adequate. The sites reviewed at that time were in need of maintenance, due to recent storm activities. Mr. Hauser felt the Program is now organized and functioning adequately.

Staff recommended continued delegation of the program with the expectation from the Winston-Salem Regional Office to continue to assist the program.

Ms. Smith had a question about the Program staff being part time. Mr. Hauser explained that this is a part time job for that staff member; however, the small amount of projects the County currently has does not require a full time staff member.

Mr. McLaughlin made a motion for continued delegation of the program with assistance from WSRO, which was seconded by Mr. Esqueda and carried unanimously.

Amendment to City of Newton Ordinance – Mr. Gray Hauser

Mr. Hauser explained the State has amended the model ordinance to reflect a ruling on the appeals procedure being used by the Local Programs. The City of Newton has amended their ordinance to reflect the appeals procedure where the appeal would be heard by an Administrative Law Judge from the Office of Administrative Hearings.

Staff recommends approval for amendments to the City of Newton.

Mr. Weintraub made a motion to approve the amended ordinance, which was seconded by Mr. Glass and carried unanimously.

Proposed Education Projects – Ms. Evangelyn Lowery-Jacobs

Mrs. Lowery-Jacobs presented the proposed education project recommendations from the Sedimentation Education Committee. These projects include: three design workshops; a workshop banquet for the Local Programs; and the Sediments Newsletter.

The proposals were included in the handouts to the Commission along with the budget proposal with a total of \$111,538.

Dr. Miller made a motion to approve the Three Workshops to Train Design Professionals budget proposal for \$24,628. Mr. Veltri seconded the motion and it carried unanimously.

Ms. Chiosso made a motion to approve the Annual Workshop and Banquet for Local Programs budget proposal for \$69,890. Mr. Glass seconded the motion and it carried unanimously.

Mr. Glass made a motion to approve the Sediments Newsletter budget proposal for \$17,020. Mr. Vick seconded the motion and it carried unanimously.

Mr. Nevils indicated final budget is not complete, and approvals are based on assumption that funds will be appropriated by the Legislature.

Approval of Revised Rule for Falls Lake for Public Comment – Mr. Gray Hauser

Mr. Hauser gave a brief background for this revised rule. He then reviewed the revisions. The original proposed rule simplified the time limit for ground cover, requiring that groundcover must be established within 10 days versus three different requirements based on the slope. However, this did not have a neutral economic impact, since the watershed contained more flat slopes than steep slopes. Mr. Hauser also explained that he could not show the economic impact was unsubstantial, since the threshold had been lowered from three million dollars to \$500,000. If the rule causes a substantial economic impact, then the rule will have to be reviewed by special office at the Governor's office, as well as the Office of State Budget Management.

Staff recommends keeping the groundcover limits the same as in the Session Law which will not require going through such a lengthy approval process. This should give the rule a better chance of getting through the economic impact analysis. Staff has revised the proposed rule to have no substantial economic impact.

Mr. Hauser indicated Durham County has amended their ordinance and inspection reports to reflect the time limits for ground cover in the session law.

Mr. Glass questioned item 4 of the rule, discussing providing permanent groundcover within seven days. Mr. Hauser indicated the term "provided" is also utilized in the SPCA and has been interpreted to mean seeding, mulching, and tacking according to the seeding specifications. The term established has been used to refer to groundcover that is growing.

Mr. Glass questioned item 4a of the rule and requested a definition of "no slope". Mr. Hauser indicated using 2% or less slope as "no slope" for GIS analysis.

Mr. Martin indicated rule should specify 2% or less for clarification. Mr. Hauser suggested the rule should not be changed from wording of the Session Law, but a policy should be implemented to define the term.

After considerable discussion, Mr. Hauser suggested submitting the rule for public notice as it is worded. The rule could be amended based upon public comments received.

Staff recommends approving the revised rule for public notice. A rule for final adoption will be presented at the November 2011 meeting.

Mr. Martin made a motion to approve the revised rule to send out to public comment. Mr. Veltri seconded the motion and it carried unanimously.

Approval of Draft Memorandum of Agreement for Local Program Delegation – Mr. Gray Hauser and Mr. Rufus Allen

The proposed MOA has been revised to reflect SCC member comments as well as those from the Technical Advisory Committee. The purpose of this MOA which is to make the expectations of the Local Programs by the Commission more clear so that there is a full understanding by all parties. Local programs need to report plan approvals and notices of violation, so that US EPA will be satisfied that sufficient information is available to monitor enforcement of the Construction Stormwater Permit.

Mr. Allen explained that there was nothing significant that was new in the MOA but that it was clearer to all parties. There should not be anything in conflict between this and other existing documents.

Mr. Martin asked why providing notice of plan approvals to DWQ was included in the MOA. Mr. Hauser indicated it was so that the sites covered by the Construction Stormwater General Permit could be identified. Mr. Nevils suggested the MOA could be revised to indicate Local Programs shall provide copies of all Letters of Approval and Financial Responsibility/Ownership forms to Land Quality.

Discussion followed to clarify specific wording, correct spelling errors, and the agreement between Division of Land Resources and Division of Water Quality. Some Commission members wanted information provided to Land Resources instead of Water Quality.

Staff recommended adopting this MOA.

Dr. Miller made a motion to approve with the changes that have been discussed. Mr. McLaughlin seconded the motion. Mr. Weintraub expressed concern with making sure reporting is being done by delegated authorities, and should be submitted to DLR. Mr. Nevils indicated DWQ does notify of failure to report violations, but the MOA can be modified to require submittals to DLR.

Mr. Vick indicated reports should be submitted to DLR and dispersed as necessary. He also expressed concern with how this agreement would impact local governments and potential loss of participation.

Dr. Voiland asked for the Commission to vote on the motion. Mr. Esqueda, Mr. Martin, Mr. Vick and Mr. Weintraub voted against approving the MOA. The motion carried with a final tally of 8 in favor and 4 opposed.

Mr. Nevils questioned whether the Commission wanted to revise the MOA to require report submittals to DLR. Mr. Martin indicated his opposition to the motion was because DLR was not involved with Local Program reporting. Mr. Allen indicated an amendment could be made to previous motion by submitting a new motion. Mr. Martin declined to proceed with further action. Mr. Nevils indicated the issue will be investigated and the MOA will be brought back to the Commission if necessary.

Resolution to Form on Committee Rulemaking – Ms. Robin K. Smith & Mr. Rufus Allen

In light of the Executive Order 70 and Senate Bill 22 that have been recently passed, Ms. Smith would like to form a Committee that would consider the economic impact of proposed rules. Mr. Allen explained the Commission does not have bylaws; therefore, the committee would only last for the duration of the current Commission and would need to be reapproved by the next Commission. This reauthorization would have to be every year.

Discussion followed on the purpose of this committee, handing this task to the TAC, and what action is needed to be taken at the current time.

Ms. Chiosso made a motion to vote on the resolution to form a Committee on Rulemaking. Dr. McLaughlin seconded the motion.

Mr. Esqueda questioned whether action must be taken at current meeting because members have not had opportunity to review information presented.

Additional discussion followed on formation of a committee and options available to the Commission for resolving the current motion.

Mr. Weintraub indicated motion should be tabled for the next meeting and modified to detail members that will comprise the committee.

A substitute motion was made by Mr. Weintraub to table this resolution until the following meeting. Mr. Vick seconded the motion and requested copies of Executive Order 70 and Session Law 2011-13 for review. The motion carried with a final tally of 10 in favor and two opposed.

INFORMATION ITEMS:

Local Program Reviews and Assistance by Regional Offices – Mr. Gray Hauser

Regional Offices have reviewed or assisted the City of Charlotte, Town of Boone, Winston-Salem/Forsyth County, City of Burlington and Guilford County local programs.

Dr. McLaughlin questioned how a groundcover violation is determined. Mr. Hauser indicated LQS conducts a field inspection and notes on report any bare areas; a follow-up inspection is conducted of those areas after 21 days has elapsed.

Legislative Update – Mr. Mell Nevils

Mr. Nevils provided an update on bills to amend the SPCA.

Senate Bill 491 exempts those activities undertaken for purposes of restoration of wetlands or other water quality projects on agricultural lands.

Senate Bill 561 limits the civil penalty assessment for first-time violators at \$25,000 when any continuing damage is abated within 180 days.

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. Three projects were issued ICAs, between November 2010 and February 2011, which have now achieved compliance.

Education Program Status Report-- Ms. 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. Nevils provided a report on current plan approval, inspection, and enforcement activities of LQS 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.

CONCLUSION

Remarks by the Director -- Mr. Simons provided an update on issues with the Division budget.

Remarks by the Commission Members -- Ms. Chiosso announced that the current meeting is the last for her second term on the SCC. She will continue to serve until a replacement is announced for the position. She indicated it had been a pleasure serving on the Commission and will continue to support the staff efforts.

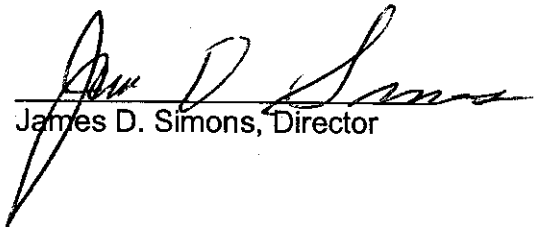
Mr. Voiland thanked Ms. Chiosso for her service to the Commission.

Remarks by the Chair -- Ms. Smith thanked Ms. Chiosso and the Commission for their service. She also thanked the staff for their efforts during the tough budget situation.

Adjournment-- As there was no further business, Dr. Voiland adjourned the meeting.



Stephanie Lane, Recording Secretary



James D. Simons, Director