**Minimum Design Criteria (MDC) Team
5/18/2015
Triangle J COG, Durham**

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| **Attendees** |  |
| ***Team Members*** |  |  | ***Others*** |  |
| Eban Bean Bradley Bennett Jonathan BivensTim ClinkscalesTracy DavisBoyd DevaneHunter FreemanMike GallantJoe Hinton Marc HouleRon HorvathBill HuntLinda Lewis | **[ ]** **[x]** [ ] [x] [ ] [x] [ ] [ ] [ ] [x] [x] [ ] [x]  | Brian LipscombAnnette Lucas Mike MacIntyreTodd Miller Cameron MooreTom MurrayRobert PattersonDerek PielechPeter RaabeLarry RaglandJD SolomonVirginia SpillmanToby VinsonRob Weintraub | [x] [x] [ ] [x] *[ ]* [x] [x] [x] [ ] [ ] [x] [ ] [ ] [x]  | Julie Ventaloro, NC DEMLRMike Randall, NC DEMLRDavid Evans, NC BEES (aka NC BELS)David Tuttle, NC BEES (aka NC BELS)Georgette Scott, NC DEMLRDan Sams, NC DEMLRCraig Deal, NC DOTRobert Josey, NC DEMLRRyan Eaves, Durham CountyDrew Hargrove, NC DENRBen Brown, City of Raleigh |

**Fast-track permitting**Annette – Updates to flowchart:
- Box 7 in flowchart, changed it to “calendar” days.
- Talked to fast-track sewer staff about variance process. Thought that was a good idea, so incorporated a variance process into the fast-track stormwater permitting process (see boxes 10 and 11). Different pathways for as-builts that are in 90% compliance or more, or less than 90%.
Rob W – What are they in compliance with? Haven’t got a permit yet to comply with.
Annette – At beginning of process, we will have assurance that project will meet MDC when it’s complete. We won’t have much up front. So the yardstick will be whether project meets MDC.
Georgette – Isn’t MDC going to be part of the rules? That’s what you’ll be meeting or not. You’ll get a permit at the end of construction in this case, but you still have to meet the rules.
Rob W - I should get a chance to correct a problem before getting an NOV.
Georgette – That’s what box 11 is for – we’ll give you a noncompliance letter. We don’t go immediately to NOV or enforcement. We’ll give you a certain number of days, you give us a schedule to fix it.
Annette – 30 days is requirement for response, not a resolution (Box 12).

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**Box 2**
Annette – Staff had a lot of discussion about Item 2 (agreement to maintain engineer of record). Will ask permittee to inform DEMR if they change the engineer of record. We would also want the engineer of record to inform us if you’re let go from a fast-track project. This is what we’re recommending. When a new engineer gets involved, they often ask DEMLR for a copy of the plans, which we won’t have unless we got it when the engineer of record changes.
Dan Sams – Any time you’re dealing with more than one engineer, we might need to know who specified what. Help if it ever gets to litigation. We wouldn’t know what’s changed from first engineer and second engineer.
JD – We’d like to have this requirement, but I don’t know if you can enforce it.
Annette – You’re asking by what authority could we require this?
JD – Right.
Annette – Permittee would have to ask the old engineer to provide the set of plans to us. Presumably they would’ve paid for the plans so it’s reasonable for them to ask for it.
Boyd – I would think the new engineer insists that we have the plans.
David Tuttle – If new engineer sees something wasn’t designed correctly, they have a legal obligation to bring it to everyone’s attention. Not responsible for original design, just to report it wasn’t built as designed. It’s dividing responsibility between engineers.
Tim – Plans and liability are two different things. This is not a liability issue. Just because a guy sends a set of plans in, they’re not free of liability.
JD – Not sure if this would change anything even if you review the plans. MDC itself is the standards. They’ll build it to that standard.
Annette – Applicant ultimately will be responsible with help of engineer.
Ron H – On as-built certification, aren’t we certifying that system operates within MDC? So whoever’s certifying as-built is certifying that original design is correct and it’s built per original design. Design hasn’t been approved yet until it’s constructed and someone turns in as-builts.
David Tuttle- You’re correct in that case, you’re shifting responsibility for the design to the second PE. You might want to work on the language. Second engineer would have to go back and make the design his. Almost before I see if it’s built correctly, will need to see if the design is correct. You might want to make that clear if that’s what you want.
Marc H – If you switch engineers, would you just not have them fill out a new form? New signed and sealed statement that when it’s completed, it’ll be designed in accordance with MDCs. He becomes to the new engineer of record. It’d be like changing ownership on sewer permit.
JD – You have to have a transfer process.
David Tuttle – Under #2, make it a requirement, not a recommendation, that they notify DENR of a change of engineer.
JD – I like Marc’s idea, a new certification form.
Marc H – Problem is you may not know. These things aren’t going to be converted until much later. Years will go by before as-built gets done. May not hear from original permittee. It would be incumbent on permittee to get that changed.
Rob W – I don’t understand why. As developer, you don’t just decide to change engineers One reason is they don’t like first guy’s work. Why is the first guy having to say I’m backing out if new guy is stepping in and saying I’ll take responsibility.
Marc H – Permittee, not engineer, is responsible.
Georgette Scott – Sometimes we have permittees that do not inform us of anything. We want to give first engineer opportunity to inform us if they’re off a job. Down the road if we get that certification, you’ll be gone.
Rob W – I don’t think you’d ever go back to him.
Tim – Second guy certified it so he’s taking all responsibility.
Annette – What if there’s no second guy?
Georgette Scott – Partial certification could be done if some of the work is completed.
Dan Sams – Step #2 in flowchart, DENR’s confirmation is that engineer meets eligibility for fast-track project.
Tim – Every PE is eligible.
Robert Josey – I understand why you would need first engineer if he’s going off the project -- it’s due diligence. If permittee doesn’t submit change for new PE. The “recommendation” wouldn’t make it into rule language.
Tom M – First engineer can’t say he’s not responsible if permittee doesn’t say that. For dam safety, original engineer can’t just back out unless there’s a new engineer of record.
Annette – Dam safety may have more authority than we do to require that.
Dan Sams – If there’s no engineer the project is no longer eligible for fast track. If we learn that old engineer is done, we contact develop rand ask who new engineer is. If there isn’t one they are no longer eligible for fast track.
Todd – So it’s up to applicant to go after engineer for bad design?
David Tuttle – If applicant has it structured correctly, they make sure engineer is just as responsible for design. As for licensing board first engineer is responsible until they make notice that they’re not doing anything else. Need to give an opportunity for DENR to contact the applicant. We have a resident professional requirement for business firms that there be a PE in each location. We require that within 30 days of that person leaving, for them to let us know. I think it carries over to the responsibility to protect the public that they’re not going to harm anybody by backing out of the project. Up to point they’ve submitted design to the contractor, that final work product, they’re fully responsible for that regardless of what engineer came in after that.
JD – It’s like a bridge collapse. Engineer’s not walking away. We carry a lot of insurance against negligence. Permittee is responsible to the state first, then you come back and get your engineer. But he’ll pay.
Annette – Maybe take Item #2 out and combine with 1d for permittee to let us know if he retains another engineer of record.
Rob W – Seems to me it would be a responsibility of applicant to inform everybody. If Engineer A isn’t doing the work and hires Engineer B, he might not release himself until he gets paid.
Georgette Scott – If we don’t have an engineer there, they’re no longer eligible for fast track. Applicant should be the one to send us the information. First engineer should send us something; otherwise, he’s liable if we think he’s still the engineer of record. It’s to his benefit to send us a notice.
JD – I think primary has to be the applicant. Engineer -- if he’s still alive -- should notify DENR.
Tim – First guy may have a legitimate issue, project’s not going how it should be. If he release here, he might lose his financial part of the deal.
David Tuttle – May be simpler to just say that due to nonpayment that I’m not currently the engineer of record --
Tim – Doesn’t engineer have to be fired for another guy to come on board?
David Tuttle – If they approach an owner to get the project away while it’s still under contract --
Tim – I don’t know why first engineer has to inform.
David Tuttle – If Board looks at whether engineer -- was there a gap in something they should’ve done. I don’t want this to be something that’s exclusive. I hate to mislead the licensee that they only needed to tell applicant. There may be some reasons an attorney may advise them to be careful it doesn’t look like they terminated the contract.
JD – If first engineer is no longer there, they need to submit a full set of plans if no new engineer is picking this up.
Tim – If first guy gets fired, if second guy picks it up, then no plans are required, right?
JD – Right.
Tim – If applicant decides he doesn’t want anybody on board, he doesn’t pay Engineer One, he’s supposed to give plans to DENR?
Dan Sams – How is applicant proceeding without a set of plans?
Tim – If there’s no engineer, there’s no long process, no short process.
Dan Sams – Again, as the person who’s supposed to be looking at this site, if work has started on the site and the engineer is no longer associated with it, I need to see what the condition of the site is versus what the plans say it should be.
JD – If there’s a break here, no engineer of record here, need to stop and see what’s going on.
Tim – It’s on the applicant, not the engineer.
David Tuttle - Not in best interest of applicant to tell DENR they don’t have engineer of record.
Dan Sams – That’s why we need to know from the engineer
David Tuttle – Board may hold engineer responsible for not notifying DENR.
Dan Sams – It’s in engineer’s best interest if they inform the state
David Tuttle – Gets to the heart of this – who sees plans and when. If they violate the terms of the permit, that could trigger plans or reapplication. As long as can substitute new engineer of record right away, continue as it was.
Rob W – With fast track, applicant says at beginning will have at all times an engineer of record. That’s a very different process than regular process.
Tim – Now if we have a set of plans how does liability change?
David Tuttle – If you have a set of plans, DENR might be looking at that while it’s being constructed and pick up on issues.
JD – If project isn’t simple and meet MDC, need to go through regular process.
Georgette Scott – That’s right. Somebody’s got to tell us if they’re not on that project.
Dan Sams – I don’t understand why people don’t want to give us the plans.
Tim – Because it takes too long to review plans.
Dan Sams – But we’re not reviewing the plans. It’s a copy.
JD – With design built -- plans not meant for full agency review.
Dan Sams – Sewer is different than building a forebay for a pond. I’m arguing that a plan needs to be prepared so contractor knows what they’re building.
Todd – Is this putting a lot of burden on applicant to know the rules? Is this workable?
Annette – We need to educate people that you’re getting no review up front, but you’re taking responsibility for finished project.
Todd – Conventional process, engineer walks you through process. Many applicants have no clue.
Georgette Scott – We should make effort to let applicants know that they need to know requirements, to notify us if engineer changes.
Ron H – It is the applicant’s responsibility and their engineer. The applicant wants the fast track because they’re concerned about time.
Annette – Anyone besides Tim have heartburn over putting Item 2 into Item 1d? Requiring first engineer to let us know if he’s been terminated, permittee letting us know is change engineer of record.
Except for two “no” votes, Team agreed.
Tim – I don’t think some of this should be a requirement. Might be good practice, but shouldn’t be required.
Rob W – If I tell everybody or nobody, I have the same responsibility. Shouldn’t matter if I have one engineer or 50 engineers. If project meets MDC or doesn’t, what’s the difference? If I inform you, my project still goes on? Doesn’t matter if engineer informs you or not?
Georgette Scott – Yes, it can still go on. First engineer should provide partial certification to applicant on what he’s completed.
Tim – There’s no way that’s going to happen.
David Tuttle – Equal responsibility should be on permittee. Way it reads right now, permittee doesn’t have to tell DENR when they’ve lost their first engineer. Say “shall inform DENR at such time no longer have engineer of record.” Way it reads right now, it shifts it more to the second engineer
Annette – We’ll keep working on the language and get it back out to the group.

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**Box 2, Item 3**
Annette – We might want to add this to Item 1d. Talks about percentage BUA not being exceeded.
Todd – So engineer or applicant signs this?
Annette – Applicant signs this as part of initial application process.
Rob W – If I’m developing a site, and 10 homebuilders building the site, I can’t guarantee that one homeowner won’t over-pave his parking lot.
Georgette – We still hold permittee responsible. If BUA is not correct, we come back to you. You need to make sure they’re doing what you told them to.
Annette – Any more thoughts on this? Group okay capturing this item in Item 1d?
Group agreed.

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**Box 3, Item 7**
Annette – We talked about moving construction sequence item into application, which I’ve done.

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**Box 6, Item 1**
Annette – We have a low-density fast track program already. It would be a form that enumerates the MDC. Engineer would be certifying that all MDC are met. Did you all want to add anything about the form?
Robert P – I don’t like the form.
Georgette – We thought this might be a good example to redesign it to match MDCs.
Robert P – If there’s BMPs involved, I think there needs to be more detail involved.
Georgette – We would have to do another one for high density.
Annette – Okay with adding this information into a form?
Group agreed.

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**Box 6, Item 2**
Annette – What kind of practices would require a soils report: infiltration systems, bioretention cells, permeable pavement sand filters. These practices have requirement for separation from SHWT, that’s why they were included.
Robert P - Regenerative stormwater, new BMPs -- what about those? Infiltration systems kind of covers it.
Bradley – Instead of a list, say “such as. . . .”
Annette – We could say “For infiltration systems such as sand filters such as permeable pavement and infiltration trenches and filtration systems. . . .
Group agreed.

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**Box 7**
Annette – Last meeting, we talked about business days. After discussion, we thought calendar days would be easier. 15 calendar days to perform completeness review; 40 calendar days to issue final permit after receiving complete as-built submittal. If no response within 40 days, deemed approved.
Tim – Trying to avoid having 39-day comment day say you have to trim orifice by 3 inches. If it’s deemed complete in 15 days, then you’re just going out in the field to say plans meet what’s submitted.
Georgette – We haven’t seen plans before. We haven’t seen site before. We have to schedule inspections. For some larger developments, might take 2 days to go through all stuff we need to look at site. It may not take 40 days.
Tim – I’m trying to see in that 40 days, what are we --
Georgette Scott - Inspection day is set up with us -- built in flexibility for both of us.
Annette – There will be a site inspection. Depending on complexity of project, DENR might inspect either before or after permit issued. Inspection might be conveyed to sediment and erosion control staff to do inspection.
Tim – At back end, we’re not going to be filling out supplement forms, right?
Georgette – We’ll look at as-built and compare to MDCs.
Rob W – Is it saying a site visit with applicant is required?
Georgette – Engineer said they might be there or might not be there.
Dan Sams – Needs to be flexible. For a high density project with a lot of water treatment faculties, we’ll need to look at that. If it’s low density, sediment inspector may have already signed off on that because they’ve seen it already. We can’t plan for every project.
Annette – Do you think this framework provides enough flexibility?
Dan Sams – I think it’s the best we can do.
Annette – When I worked in wetlands, I had 45 calendar days. I always planned to review it no later than 30 days. Don’t want to be up against the clock. I know Wilmington and Washington staff strive to do that as well.
Todd – If DENR isn’t able to get out, and permit is automatically issued after 40 days, who bears responsibility for violating water quality standards?
Dan Sams – If we’re not making 40 days a lot of the time, we’re going to adjust things, change our priorities. Responsibility of what’s on that as-built will always be on the engineer.
Tim – If it is approved and it’s different than what’s in as-builts, it’s not the engineer. If as-builts don’t meet MDC, there’s bigger problems.
JD – State’s not on the hook anyway.
Annette – Group okay with Box 7?
Team agreed.

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**Box 9**
Annette – If 100% of MDC are met, DENR will issue final stormwater permit within 40 calendar days after receiving complete as-built submittal package.
JD – I would like Box 9 to start with “If MDC are met,” get rid of 100%
Tim – There has to be some tolerance.
Dan Sams – I think playing with these percent numbers mean nothing. I would suggest “mostly.”
Georgette – Please don’t put those words in there.
Todd – Isn’t bottom line that water quality standards are being met?
Annette – That is one of the criteria we used to come up with the MDC. I would think tolerances would already be built into the engineers’ designs. There’s nothing in the session law that talks about tolerances.
Georgette – On certification form, we’ve allowed minor variances. You need to explain what they are.
Tim – I like to have certainty in things.
Dan Sams – Certainty is “meets minimum requirements.”
Georgette – Put “includes minor variances,” which will be explained on certification.
Boyd – Don’t we have something in certification statement that says “substantially compliant”?
Georgette – Yes. Also says if you have variation from plan we reviewed, explain it and verify is still working the way it’s supposed to.
Derek – Could we not just carry that statement over? I agree with Tim, and I don‘t agree with Tim. There should be tolerances for specific things, not the MDC in general. It’s ambiguous the way it is right now. We can’t list tolerances for each MDC we have. I like Georgette’s idea of allowing them to list minor variances to MDC on certification. If certifying engineer sees something major, they’ll go back to applicant to get it fixed.
JD – EEP used to enforce this thing. As-builts off a tenth of a foot or two feet, and they wouldn’t pay anybody because you were out of compliance. It’s very real. It happened. It’s the system performance that really matters.
Dan Sams – This agency has no financial incentive to do that.
Annette – We don’t want anyone to rip stuff out. We’re trying to protect the applicant and water quality. I’m hearing them say if there’s variation from MDC, it’s on applicant to explain to us how it still protects water quality standards.
Tim – Last sentence says this follows the example of the sewer fast-track program policy. That needs to be taken out.
Annette – I was told they have a variance process. Sometimes they require more frequent clean outs because of slope. Seems like “minimum” is minimum. Professor Hunt was here -- he was reaching for the minimum.
Boyd – In our current stormwater rules 2H .1008, other designs may be accepted by the Director --
Annette – But fast track is based on meeting the MDC. That could apply to projects not on fast track. We need to inform people that minimum is minimum. Tolerance should be built into the construction -- pad it a little bit.
Ron H – Agree that minimum should be the minimum.
Rob W – In scenario with sewer, you do extra maintenance if something’s off. You build your pond which is working as sediment device. Two years later you put in your forebay. If forebay needs to be 25% smaller, but we clean it out more frequently, water will look same under the outlet structure. You started with fast track. 2 years later you convert it. You can’t go back to not fast track. What do you do?
Ron H – You file for a regular permit.
Tim – Are there no tolerances in vertical construction, building code?
Ron H – Must get licensed engineer to certify it. I do understand the complaint, but if a project meets MDC, we’re approved.
Tim – You’re designing it to meet it; it’s the construction part--
Ron H – With today’s equipment, I think we can accomplish it. With lasers today and technology, I chew my contractors up and down when they’re off. It’s not tolerance -- it’s a mistake.
Annette – How about: If the as-builts show variation from the MDC, then the applicant shall explain the variations and, if appropriate, shall explain how the project protects water quality standards in spite of the variations. If DENR concurs with the applicant, then DENR shall issue the final . . . .
Georgette – If you start changing major things, size of pond, forebay, I think you should go back to the regular program.
Tim – All permits have to meet the MDC.
Annette – We allow people to do alternative designs, but not under fast track.
JD – Whole reason for Box 10 is if we don’t have compliance, minor variance. If I get to Box 11, it’s been built wrong minorly, how do we get language in 10 right to give the agency flexibility to issue the permit?
Annette – We have been working on Box 10.
Georgette – I think Box 10 could be resolved with language on certification form. I think it’s a judgement call.
Derek – Box 10 still leaves subjectivity up to what is a minor variance is or isn’t. Wouldn’t it be easier to define what a minor variance is? Like 10% of design requirement? If as-builts show a minor variation of 10% or less, or whatever the number is, of a specific design standard. Site conditions will always cause variations to the design. There’s no way you can guarantee it will be 100% way the paper shows it.
Dan Sams – If you build in that you get 10% of play, everything will be coming in at 90%.
Tim – In sewer, people aren’t designing 10% less.
JD – Because we have in Box 9, says MDC are met. Add in Box 10 something to give State some wiggle room. Keep subjectivity in Box 10. Box 9 will regulate the trivialness of Box 10. It’s not like a structural system -- it’s more like a biological system. Science isn’t that good on it.
Annette – I think if we publish a variance, that becomes a new MDC. We say here in good faith to set the minimum to make a device function properly.
Dan Sams – You can argue forever whether two regulators are consistent. You can argue whether two engineers or developers are consistent.
Robert P – I get plans where you’ve got right angles on your contours on your ponds. That’s not buildable. Needs to be drawn so it is buildable.
JD – My motion is that you build in flexibility, some subjectivity in Box 10. Then let’s move on from here.
Annette – Anyone who likes suggestion to put percent tolerance into Box 10?
Tim – I do. Doesn’t have to be on all the MDC though.
Annette – Most people want flexibility for applicant to show there is variation, but despite that, it is still protecting wq standards. I don’t know how to get around that DENR makes the call whether it does or not.
Robert P – From the as-builts I get, there will be a lot more people ending up in Box 11 than we think. Minor stuff will get taken care of. It’s the big ones that will take up the time.
Georgette – If it’s a major thing, and we accept it, it becomes a problem later with HOA, in later inspection when it’s operating. Engineer is responsible for that drawing.
Robert P – If staff make a big deal over whether a weir is a little off, that needs to be brought to the attention of the supervisor.
Ron H – Editorial comment. We’ve evolved since mid-90s that these things weren’t being built or maintained properly. Day 1 when you put the as-built in, if engineer is responsible, he’ll check on slopes. Rerun calculations if find things that are off to make sure it will still work. Bill acknowledged tolerances being used now have drastically changed, so he feels comfortable allowing more storage in bioretention. I think we’ve gotten a lot here. If you bust our chops on this, we’ll be back here again one day.
Dan Sams – This box is a DENR action. Might need to put this somewhere else if want applicant to do something.
Annette – Derek proposed 10%. Some of MDCs don’t lend themselves to percentages.
Rob W – If staff notes MDC are not met, applicant would be able to show that he substantially meets requirements. If it’s something minor, up to applicant to show would substantially meet requirements.
Annette – How about: Move as-built variation demonstration to Box 6 with application submittal. And combine Box 10 with Box 9: If MDC are met or if staff determines that variations do not impede the project from meeting water quality standards. . . . In this case, we can get rid of Box 10.
Group agreed.

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**Box 11**
Changed to “If the project design does not comply with the MDC. . . “
Add in reference to NCBELs formal complaint process.
Todd M – Are these the right words to use? A permit hasn’t been issued yet.
Georgette –Will say you’re out of compliance with MDC.
Bradley – At this point we’re looking at schedule of compliance with the rule.
Georgette – When we go in on violations, we require them to provide a timeline of compliance. That’s what we’re talking about here.
Tim – This says project “design.” We’re not at design stage at this point. So this would only come up if you sent something in that doesn’t meet the MDC.
Annette – Or if on paper it meets MDC, but staff has opportunity look at in in the field and it’s not depicted accurately.
David Tuttle – I think it may be better not to even mention in the rules about referring to the Board. It’s either obligating you to do something when you might not always need to if you can work with someone. And if there’s other issues you have with a PE, you still want to be able to file a complaint. If you’re silent, you can always file a complaint. RRC will want to have our Board weigh in on the rule.
Georgette – I think “enforcement actions” gives us enough latitude.
Bradley – We haven’t had a chance to go through this language with our legal folks.
Tim – Is this a project where there’s a problem with major deficiencies? It’s your obligation to tell engineer that there’s a deficiency. This is where an as-built engineer says meets MDC and you say it doesn’t.
Georgette – You get a letter of noncompliance that will give you particulars of what you think the problem is.
Annette – Letter of noncompliance gives you an opportunity to work it out -- not like a violation.
David Tuttle – When talks about certification of as-built such that intent of stormwater rules and approved design has been preserved. Putting responsibility on as-built certifier that it meets MDC. Not sure if this language is strong enough for that.
Rob W – As-built is essentially as built landscaping also, which isn’t PE’s deal. And say soil’s the same soil tested for infiltration rate. Could be really gray area, and nobody’s at fault.
Annette – Who’s okay with Box 11, knowing language needs to be massaged by attorneys?
Group agreed.

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**Box 13**
David Tuttle – Should be “NC Board of Examiners for Engineers and Surveyors (NC BEES)”

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**Presentation by NC BEES
David Evans**
Giving overview of enforcement activities. Regulates engineer and surveying profession through licensing and enforcement. Make sure they comply with our statute and rules, including DENR requirements. We don’t charge licensee with violating a DENR regulation, but a rule of conduct.

Make-up of Board: The Board had nine members: 4 engineers, 3 surveyors, and 2 public members.

Licensees: Have over 30,000 licensees, most are PEs. Half of PEs are nonresidents; 2600 surveyors. 400 of those are also PEs (dual licensees). 3656 licensed businesses.

Year 2014 Cases: 34% of our cases last year were against Pes; 32% were against surveyors; 23% non-licensed individuals and firms. Tend to see more residential projects than commercial projects. Last year, 80% of cases against firms came from PE’s; 20% came from business owners. 58% of cases initiated by Board. We did not get even one sworn complaint last year from a stage agency. We got a couple referrals. Over years, we haven’t gotten many complaints from DENR. Hopefully, through this dialogue, we’ll begin to be made aware of issues.

Reasons for Violations: Violations often a result of inexperience (inadequate training, lack of knowledge of rules). We also see incompetence; professionals have to act in their area of competence. Financial strain and greed are also something we see. Some don’t have written contract or scope of services, poor communication, poor judgement. With 27,000 individual licensees, there will be some bad apples

Retract certification: Licensees have requested from time to time to retract a certification because they haven’t been paid. That’s not an issue for the Board. Licensees have tried to issue something as preliminary – that’s not permitted.

Verify License: We encourage you to determine if someone has a valid license by looking up their name or license number. Can also see if someone’s got a restriction on their license because of disciplinary action. Can restrict someone from practicing in a particular area.

Filing a Complaint: Not every complaint warrants a disciplinary action. Some cases can be closed based on corrective action, no evidence, didn’t rise to level of disciplinary action.

At what point do you file a complaint? Need sworn and notarized with corroborative evidence. Hopefully, if you come across engineering work that you’re verifying that they’re licensed and their company is licensed. Look for competency red flags – are they certified in multiple disciplines. Certification tells regulator, owner, contractor that you can rely on the final work product.

We have a complaint form on our website that you may use. Complaint needs to be sworn to and notarized. Asks to name licensee, project. Not so onerous on DENR if going to file a complaint – can just say “see attached findings.” Once we get a complaint, we’ll determine charges, put licensee on notice, interview all the parties, may have a disciplinary hearing before the Board.

Disciplinary Process: Information is presented to appropriate Board committees. Board determines if there’s a violation. We don’t take lightly the idea of taking someone’s license. Look at experience, education, field investigation, financial gain, judgement, firm culture, etc.

**David Tuttle**
Disciplinary Action: Send notice of contemplated disciplinary action to licensee. Licensee given 20 days to resolve, respond. Licensee can come in and talk to Board to explain or disagree. That doesn’t tend to go too far in getting reduction of the action. Then goes to settlement hearing. Board renders their decision. Then has 30 days to appeal to Superior Court. At any one time, we typically have one case in the appeal process.

Sanctions: Authority; evidence of gross negligence; misconduct or incompetence; will amount imposed or action be substantial deterrent to a violation; how has the Board treated similar violations in the past; history of violations by licensee.

Fast-track: For this fast-track process to work, it’s going to have to involve the Board, or at least the threat of the Board.

Confidentiality: If DENR files complaint against licensee, it is confidential during investigation. Against a nonlicensee, is public record from the beginning. But probably materials DENR provides to us is subject to public records law in any case.

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**Box 13**
David Tuttle – I don’t know if you even need to mention the Board here.
Annette – Enforcement for fast-track won’t be any different than regular process. Anyone else have thoughts on this? Change to “engineer *may* be reported to NC Board. . . “
Rob W – Strike whole reference to Board.
Dan Sams – Do we want to run this by Craig Bromby?
Bradley – That’s why Drew and Robert are here. We will come back with final language.
Georgette – Say any enforcement action shall match DENR’s . . . .
Linda – Just say “in accordance with” instead of match.
Group agreed to remove reference to Board.

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**Landscape Architects**
Ron H – Has anyone heard anything from landscape architects about being excluded from this process?
Annette – Yes. They are angry about not being included as one of the types of professionals allowed to do fast track. They’re not excluded from going through the regular review process. We’re not changing that.
Bradley – This team decided that if PLS/LA submits a fast track certification, they’d have to have a PE sign off on it.
Craig Deal – Was part of reason for specifying PE’s that, without in depth review, there are specific areas of stormwater design that aren’t like culvert under driveway -- there are number of areas that are the practice of engineering? This group didn’t seek to exclude anyone. It’s about the domain of this type of work.
Annette – Yes, I think you said it well. In light of concerns from landscape architects, does anyone want to change our decision?
Ron H – I just wanted to mention it.
Tim – It’s not about excluding anyone. It’s about protecting public safety.

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Annette – We will update these fast track documents. Next month’s meeting will be mostly rule readoption.

**Next Meeting – June 22, 2015 – 9:30 to 3:00, Rule Readoption**