

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
NOVEMBER 16, 2017
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 16, 2017 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. Susan White (Chair)
Mr. Jonathan Bivens
Ms. Natalie Berry
Ms. Karla Hammer-Knotts
Ms. Heather Deck
Dr. John Havlin
Ms. LeToya Ogallo
Mr. Mark Taylor
Mr. Hartwell Carson

OTHERS

Mr. Tracy Davis, Director, Division of Energy, Mineral, and Land Resources (DEMLR)
Mr. Toby Vinson, Chief, Program Operations, DEMLR
Ms. Julie Coco, State Sedimentation Engineer, DEMLR
Mr. Jeevan Neupane, Assistant Sedimentation Engineer, DEMLR
Mr. Shawn Maier, Attorney General's Office, General Counsel to the Commission
Mr. Boyd DeVane, DEMLR
Mr. Don Lee, NCDOT Roadside Environmental Unit (REU)
Mr. David Harris, NCDOT REU
Mr. Ben DeWit, NCDOT REU
Mr. Jeremy Goodwin, NCDOT REU
Ms. Karyn Pageau, Durham County Local Program
Mr. Kirk Stafford, Town of Cary Local Program
Mr. Jeff Hall, Town of Cary Local Program
Mr. Carlos Bagley, Johnston County Local Program
Mr. Tom Gerow, Jr., NC Forest Service

PRELIMINARY MATTERS

Ms. Deborah Goodwin (DEMLR) swore in new Commission members Ms. Deck, Ms. Ogallo, Mr. Taylor, and Mr. Carson.

Dr. White called the meeting to order.

Those in attendance introduced themselves. Ms. Hammer-Knotts announced any potential conflicts with the new Commission members, and reminded them to recuse themselves from any discussions related to those conflicts.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Dr. White asked for a motion to approve the minutes from the August 22, 2017 meeting. Ms. Hammer-Knotts moved to approve the minutes. Mr. Bivens seconded the motion, and the minutes were approved unanimously.

NEW MEMBER ORIENTATION

Mr. Maier presented a briefing on public meetings, public records, and the quasi-judicial functions of the Commission to its members. A copy of this presentation is attached to the original minutes for this meeting.

Mr. Davis presented members with an overview of the Division of Energy, Mineral, and Land Resources. A copy of this presentation is attached to the original minutes for this meeting.

Mr. Vinson presented members with an overview of the Sedimentation Program. A copy of this presentation is attached to the original minutes for this meeting.

The agenda was modified to accommodate Action Items A, B and C, followed by Information Item H, Action Item D, and Information Item A.

ACTION ITEMS

Local Program Review, Recommendation and Vote on Continued Delegation – Mr. Jeevan Neupane – Mr. Neupane summarized DEMLR staff's review of each of the Local Programs listed in the agenda. See the 18-page report entitled "Local Program Report to the SCC" dated November 16, 2017 attached to the original minutes for this meeting. The Commission voted to continue delegation of all local programs as recommended by DEMLR staff except for the Johnston County local program.

The motions were as follows:

City of Winston-Salem/Forsyth County: Motion by Ms. Knotts for approval with a second motion for approval from Ms. Deck. All members voted to approve continued delegation with the exception from Mr. Taylor, who abstained from voting.

Guilford County: Motion by Mr. Bivens for approval with a second motion for approval from Ms. Deck. All members voted to approve continued delegation.

Town of Southern Pines: Motion by Ms. Deck for approval with a second motion for approval from Mr. Taylor. All members voted to approve continued delegation with an exception from Ms. Knotts.

Chatham County: Motion by Mr. Carson for approval with a second motion for approval from Mr. Bivens. All members voted to approve continued delegation.

Catawba County: Motion by Ms. Knotts for approval with a second motion for approval from Mr. Bivens. All members voted to approve continued delegation.

Ms. Deck asked Mr. Neupane to read aloud the letter of response from Johnston County dated November 15, 2017 regarding DEMLR's proposed recommendation for probationary status. The Commission accepted staff's recommendation for a one-year probationary status, but requested that staff provide an interim review of the program's plan review and inspection rate improvements by the second quarter commission meeting of 2018. Mr. Bivens made a motion based upon the above, and Mr. Carson seconded the motion. The motion was approved unanimously by the Commission.

Mr. Taylor asked that future local program reviews include a date when construction began on each project. This request is for the Commission's information.

The meeting was moved to the fourth floor of the building.

NCDOT Program Review – Mr. Neupane presented findings and recommendations on fourteen different projects reviewed by DEMLR staff with NC DOT personnel. See 2017 NC DOT Annual Review Report attached to the original minutes for this meeting. The DEMLR staff recommended continued delegation of the erosion and sediment control program to this agency. Mr. Carson made the motion to approve staff recommendations for delegation and Mr. Taylor moved to second the motion. The Commission voted unanimously to continue delegation to the agency.

Review of Appreciation Letters to Former SCC Members - Ms. Coco read aloud the content of the letters. No changes were requested. Ms. White signed the letters to be mailed to the former members.

INFORMATION ITEMS

Overview of the Proposed Process for Remission of Civil Penalties – Ms. Julie Coco – Ms. Coco read the statutes regarding the remission of civil penalties. She then presented an example of a civil penalty assessment package mailed to a violator, as well as a remission request package received from the violator (now petitioner). A draft letter of receipt with options for the petitioner was also presented to the Commission for review.

Discussion (and Decision) on Civil Penalty Remission Process and Hearings - Details regarding the remission process were proposed to the Commission, and two recommendations regarding the overall process were made as follows: 1) that the initial remission request be settled through the DEMLR Director's office, if possible and 2) that DEMLR's General Counsel be allowed to present its oral arguments first to the Commission, if oral presentations are heard. Ms. White, Ms. Berry, and Ms. Coco agreed to prepare flowcharts of the proposed processes for both DEQ and local programs that will be presented to the remainder of the commission members on a conference phone call in January of 2018. The goal is to have a process finalized for an in-person vote at the next quarterly meeting in February of 2018.

Rules Review Process Update – Mr. Boyd DeVane – Mr. DeVane reported on the status of the Sediment Rules Re-Adoption Workgroup meetings and the associated documents produced by the Workgroup. See attached "Suggested changes to Chapter 04 of the Sedimentation Control Rules" memo, "Proposed Re-Adoption Schedule," and the red-line copy of the suggested changes to Sedimentation Control Rules that are attached to the original minutes for this meeting. Mr. DeVane requested that the Commission members review the proposed changes to the sediment rules and to share them with their constituents and other interested parties and to provide any feedback directly to DEMLR staff. Staff intends to prepare a fiscal note associated with these amended rules in time for the next Commission meeting. DEMLR staff has placed the documents on its web page to facilitate public review.

Enforcement Report – Included in handouts, but not presented due to time constraints.

Land Quality Section Active Sediment Cases Report – Included in handouts, but not presented due to time constraints.

NCDOT Report – Included in handouts, but not presented due to time constraints.

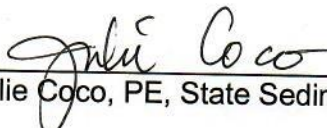
Education Program Status Report - Not presented due to time constraints.

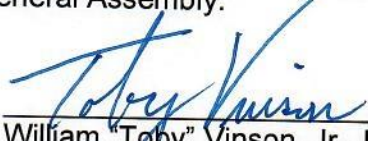
Sediment Program Status Report – Included in handouts, but not presented due to time constraints.

Land Quality Section Report – Included in handouts, but not presented due to time constraints.

CONCLUSION

Remarks by the Director – Mr. Davis thanked the Commission for their support of the Division's staff and programs. He provided a history and update to the 2014 study that provided justification for the proposed sedimentation program fee increase. The ratio of projects to full-time equivalent positions is high. The goal is to increase the plan review fee from \$65 to \$170 per disturbed acre to cover increasing staff and operating costs, and to provide additional staff resources needed for monthly inspections of active and inactive projects. A three-year phased fee increase has been proposed to lessen the burden of a fee increase on the regulated community. Any fee increase supported by the Commission must be ratified through the General Assembly.


Julie Coco, PE, State Sediment Engineer
Division of Energy, Mineral, and Land Resources


William "Toby" Vinson, Jr., PE,
Interim Director,
Division of Energy, Mineral, and Land Resources


Dr. Susan White, Chair
Sedimentation Control Commission