

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
MAY 20, 2010
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 20, 2010 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

Mr. Donnie Brewer, Chair
Mr. Richard Vick
Mr. William "Buzz" Bryson
Mr. Joe Glass
Dr. Joseph Kleiss, Vice Chair
Dr. Bill Miller
Mr. Robert Weintraub
Mr. Tommy Esqueda
Ms. Robin Smith
Dr. Michael Voiland
Ms. Elaine Chiosso
Mr. Glover McPherson

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
Mr. Gowon Goode, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Jana Vo, Land Quality Section
Mr. Manly West, NC Soil & Water Conservation Commission
Ms. Gail Bledsoe, NC DFR
Mr. Boyd DeVane, NC DWQ
Mr. Scott Ford, City of High Point
Mr. Kirk Stafford, Town of Cary
Ms. Melanie McCaleb, NCSU
Mr. John Payne, NC DOJ
Mr. David Harris, NCDOT
Ms. Jeanette Powell, City of Raleigh
Mr. Jon Nance, NCDOT
Mr. Frank Crawley, NC DOJ
Mr. Ricky Greene, NC DOT

Mr. Chris Roberts, Durham County
Mr. Mark Taylor, SCC Technical Advisory Committee
Ms. Kelly Porter, WRRRI
Ms. Pat Harris, DSWC

PRELIMINARY MATTERS

Mr. Brewer called the meeting to order and read Executive Order No. 1.

Mr. Esqueda recused himself from Action Item A, Local Program Reviews, pertaining to the City of Raleigh delegated program.

Dr. Kleiss recused himself from Action Item C, pertaining to the proposed education contract with the NC State Soil Science Department.

Dr. Voiland recused himself from Action Item C, pertaining to the proposed education contracts with the Water Resources Research Institute.

Those in attendance introduced themselves.

Mr. Brewer called for approval of the minutes for the February 18, 2010 meeting. The motion to approve the minutes was made by Mr. Joe Glass. Ms. Elaine Chiosso seconded the motion, and it carried unanimously.

ACTION ITEMS

Local Program Reviews - Mr. Gowon Goode

Mr. Goode reported on the reviews of the Towns of Kitty Hawk, Kill Devil Hills and Nags Head, the Cities of Jacksonville, Raleigh, and Newton, and the Counties of Catawba and Iredell. A copy of the Local Program Report to the SCC is attached to the original minutes.

Town of Kitty Hawk

The Town of Kitty Hawk program was reviewed March 17, 2010. The sites reviewed were in compliance. Improvements in documentation had been made since the last review.

Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation to the Town of Kitty Hawk, which was seconded by Mr. Glass and approved unanimously.

Town of Kill Devil Hills

The Town of Kill Devil Hills program was reviewed March 18, 2010. The two sites reviewed were in compliance. Improvements in documentation of inspections and plan approvals had been made since the last review.

Staff recommended continued delegation of the program. Dr. Miller made a motion to continue delegation to the Town of Kill Devil Hills, which was seconded by Ms. Smith and approved unanimously.

Town of Nags Head

The Town of Nags Head program was reviewed March 18, 2010. One of the three sites evaluated was noncompliant because of a lack of ground cover. Documentation of inspections was adequate.

Staff recommended continued delegation of the program. Dr. Kleiss made a motion to continue delegation to the Town of Nags Head, which was seconded by Mr. Glass and approved unanimously.

City of Jacksonville

The City of Jacksonville program was reviewed March 24, 2010. Three of the five sites evaluated were noncompliant. The violations had been noted on inspections reports and follow-up inspections were scheduled in seven days. Inspections are being done on a frequent basis.

Staff recommended continued delegation. Mr. Esqueda made a motion to continue delegation to the City of Jacksonville, which was seconded by Mr. McPherson and approved unanimously.

City of Raleigh

Mr. Esqueda recused himself from the review of the City of Raleigh local program.

The City of Raleigh's delegated local program was reviewed April 21, 2010. Three of the six projects that were inspected were noncompliant due to failure to install or maintain measures.

Staff recommended continued delegation of the program. Mr. Vick made a motion to continue delegation to the City of Raleigh which was seconded by Ms. Smith and approved unanimously.

City of Newton

City of Newton's delegated Local Program was reviewed April 28, 2010. One site was inspected, which had started without an approved plan. The site was in compliance at the time of the review. Documentation of plan approvals and disapprovals had been improved since the last review.

Staff recommended continued delegation of the program. Ms. Chiosso made a motion to continue delegation which was seconded by Dr. Miller and approved unanimously.

Catawba County

The Catawba County program was reviewed April 28, 2010. The three sites inspected were all in compliance.

Staff recommended continued delegation of the program. Dr. Kleiss made a motion to continue delegation, which was seconded by Mr. Glass and approved unanimously.

Iredell County

The Iredell County program was reviewed May 3, 2010. One of the three sites inspected was in compliance. One of the two noncompliant sites had been assessed a civil penalty.

Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation, which was seconded by Mr. Weintraub and approved unanimously.

Adoption of Draft Rules for Design Standards in the Upper Neuse River Basin and Permanent Ground Cover - Mr. Gray Hauser

Upper Neuse River Basin Rules

Mr. Hauser gave a brief history of the Session Law 2009-486 that established four design standards for sediment and erosion control for the Upper Neuse River Basin (Falls Lake). The first three standards listed are identical to those developed for sensitive watersheds (i.e., high quality waters, outstanding resource waters, and WS-I and WS-II water supplies). Not all the design standards for sensitive watersheds were included. The standards concerning the 25 year storm, high efficiency sediment basin, and the side slopes of newly constructed channels were incorporated into the session law. (Copy of proposed rule attached to original minutes).

The fourth standard is a more stringent time limit for establishing ground cover. Areas with no slope have 14 days to establish ground cover. Areas with moderate slopes ($0 \leq 3:1$) have ten days and, steep slopes ($3:1$ or $>$) have seven days to establish ground cover.

The session law requires the SCC to develop and adopt rules for this watershed by December 1, 2011. Mr. Hauser is hoping to return to the Commission in August with information from public comments.

Mr. Hauser introduced Mr. Taylor to present recommendations from the TAC on the Falls Lake rules. Mr. Taylor introduced the proposed rule that the TAC generated that focused on the fourth part of the standards, leaving the first three from the session law unchanged. Federal effluent guidelines that will become effective in about a year were taken into consideration when working on the fourth standard. The committee has simplified the standard by removing the slope criteria that they predicted to have multiple complications. Mr. Taylor read the revised standard. Once the Committee removed the slope criteria language, they focused on the "10 days" portion of the rule. This was determined by the Committee to be the most acceptable time period. At this time Mr. Taylor took any questions the Commission may have and thanked the Committee Chairman for his leadership.

The Commission asked for additional explanation of how the Committee reached a conclusion on "10 days". Mr. Taylor indicated the Committee wanted to keep the number of days as low as possible. Mr. Taylor explained that they did take into consideration the time and effort it would take for ground crews to complete seeding. Ground cover at this stage would not have to be permanent and could be temporary ground cover. The Committee felt seven day was too short of a time period.

A concern was brought forward whether this period would allow enough time for contractors to schedule subcontractors to get to the property and seed properly since many have reduced their crew size due to the slowed economy. Mr. Weintraub expressed a similar concern that temporary seeding would be used more instead of permanent seeding due to time constraints and asked if that was considered by the Committee. Mr. Taylor explained that the Committee did discuss these issues and that these standards will only be applied in a small watershed and will not affect the rest of the state. He also explained that the market will be forced to adapt to the rules and that it includes a stipulation that an extension could be approved if determined necessary.

Mr. Weintraub also asked about the difficulty of enforcing the rule. Mr. Taylor explained that there is room for interpretation of these rules; however, he believes the intent of these rules is clear.

Dr. Miller asked why the slope criteria were in the rule to begin with. Mr. Taylor clarified that it was in the session law and was not something they had control over. Mr. Nevils explained that the session law states the Commission could develop a new set of rules, but had to consider the session law. The Chairman thanked Mr. Taylor for his presentation.

The Chairman recommended that staff go back to the committee and explain why the few technical changes were made to the rules they developed to keep them informed. A motion was made by Dr. Voiland to approve the staff recommendations with the addition of adding "soil or geologic conditions" to the fourth standard. The motion was seconded by Ms. Smith, and it carried unanimously.

Mr. Brewer abstained from voting on this motion.

Permanent Ground Cover Rule

Mr. Hauser began by discussing the existing statutes and rules regarding ground cover. Within the Sediment Act (113A 57, Section 3), there is an existing rule for establishing ground cover within a time period specified by rule of the Commission. Rule 15A, NCAC 04B .0107 establishes that time period of 15 working days or 90 calendar days upon completion of construction, whichever period is shorter except as provided in 0401 24(e) which are the high quality standards. (Copy of proposed rule attached to original minutes)

The code of the Federal Register (effective early 2010) for effluent limits (ELG) concerning soil stabilization will be part of the NPDES General Stormwater Permit as of

August 3, 2011. The TAC is proposing a new rule that will be an amendment to go in effect as of August 3, 2011. Mr. Hauser invited Mr. Taylor to discuss the TAC's process of developing the rule. Mr. Taylor reviewed the new rule and discussed the details of time periods for the state and 25 mountain counties. The proposed rule also provides an exception to allow contractors to disturb a small area of land on the project without allowing the clock to start over for establishing ground cover. Mr. Taylor discussed how the TAC determined which counties will be listed as "mountain" counties and that they expect some adjustment to the list throughout the process.

Mr. Weintraub wanted to clarify that this rule is not in conjunction with the Upper Neuse River Basin rule and that it is in coordination with the Federal Regulation that will apply statewide and go into effect next year. He was concerned that the statement groundcover shall be "established" was not in the ELG and questioned why staff recommends that phrase here. Mr. Taylor explained that this was for permanent groundcover. Mr. Hauser elaborated that the emphasis should be placed on "stabilization to be completed for groundcover to be established". Mr. Weintraub explained his concern was that this time period was too short to have groundcover "established" and that the growing season will impede developers from complying with this rule. Mr. Nevils answered that inspectors will be looking for temporary cover in the short run and permanent cover over time and that this rule mirrors what is already in effect. He expects the rule as currently proposed will go through some adjustments. Mr. Nevils suggests the Commission put together a working group to take further look at the rule.

Mr. Hauser recommended the Commission allow this version go to public review and allow the public to have input and express concern before bring the rule back to the Commission. Mr. Nevils suggested having stakeholder meetings to get consensus from the public to avoid an even lengthier rule approval process.

Ms. Chiosso made a motion to adopt this rule as is and proceed to public hearing. Dr. Voiland seconded the motion. Further discussion followed concerning the technicalities of rulemaking as well as developers not being able to establish groundcover due to natural causes. Mr. Hauser and Mr. Nevils explained possibilities of new rulemaking and that inspectors will be allowed to use best professional judgment when inspecting the sites. The Commission also discussed other technicalities with staff present from DOT (Mr. Harris and Mr. Nance).

Mr. Weintraub continued to express concern about how the ELGs are implemented and that contractors would not be able to close out phases and have to continue to monitor stormwater.

An amendment to the motion was proposed to replace the use of the word "must" to "shall" and that language from the Upper Neuse River Basin rule about exceptions for establishing groundcover may be allowed when natural factors impede the seeding process. Ms. Chiosso and Dr. Voiland agreed to this amendment to the motion. The motion carried with eight votes for and one vote against.

The chairman clarified the proposed rule will now proceed to the public hearing process including three hearings (west, central and east).

Proposed Education Projects - Ms. Jana Vo and Dr. Joe Kleiss

Dr. Voiland recused himself from Actions Item C, pertaining to the proposed education contracts with the Water Resources Research Institute. Mr. Kliess recused himself from the proposed contract with the NCSU Soil Science Department.

Ms. Vo presented four proposals for sedimentation education contracts, as recommended by Land Quality staff and the Sedimentation Education Committee. (Copies of the proposals are attached to the original minutes).

The first contract was with the Water Resources Research Institute for the local program workshop in the amount of \$65,918.

The second contract proposal was with Water Resources Research Institute for four two-day workshops for design professionals in the amount of \$28,472. These workshops would occur in Raleigh and near Asheville and would involve one day in the classroom and one day learning about turbidity control with an outdoor exercise.

The third contract proposal was with the N C State Water Quality Group to electronically publish two issues a year of the Sediments Newsletter in the amount of \$17,020. This will be a reduction from four issues per year. Ms. Vo explained that the Sediment Education Committee also recommended issuing a summary of each Commission meeting between the newsletters.

The final proposal was with the N C State Soil Science Department to construct a turbidity control demonstration site at the research farm in Fletcher, NC similar to the SECREF site on Lake Wheeler Road in Raleigh. This would allow the workshops to expand their outreach. The contract amount is \$19,550.

The Commission asked about sending the Newsletters out via e-mail and Ms. Vo explained the subscribers had dropped off from about five thousand to five hundred once the Newsletters were distributed solely by e-mail.

Ms. Smith moved to approve the local program workshop program at the amount proposed, which was seconded by Mr. McPherson and approved unanimously. Mr. Miller moved to approve the four workshops for design professionals, which was seconded by Mr. Vick and approved unanimously. Ms. Chiosso motioned to approve the Newsletter proposal, which was seconded by Mr. Glass and approved unanimously. Ms. Smith moved to approve the development of the western demonstration site with an addition of \$8,000 if the funds became available. The motion was seconded by Dr. Miller and approved unanimously.

Discussion continued about resources that are available online and how to market the availability of that educational information.

Nominations for Membership to the Technical Advisory Committee – Mr. Donnie Brewer.

Ms. Smith nominated Fred Grogan (Landscape Architect), Craig Wyant (Landscape Architect) and Robert Hastings (Water Resources). The staff and Chairman had reviewed their resumes. The Chairman expressed that they were qualified to be on the TAC. Ms. Smith moved to approve these nominations. The motion was seconded by Mr. Kleiss and was approved unanimously.

Reallocation of Education Funds – Mr. Mell Nevils

Staff requested that unused money allocated to education projects be reallocated for Land Quality Section operations such as regional office rent, travel and supplies. Unspent funds totaled \$47,212. This reallocation was meant for just the current year. Mr. Nevils will provide a detailed list of funds reallocated during the next Commission meeting. Dr. Miller moved to approve the reallocations of funds. Mr. McPherson seconded the motion, which was approved unanimously.

INFORMATION ITEMS:

Updates on Matters before the General Assembly-- Mr. Nevils provided information on proposed legislation.

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. Goode presented the status of Civil Penalty Assessments. There were no questions. A copy of this report is attached to the original minutes.

NCDOT Activity Report-- Mr. Goode presented the list of "Immediate Corrective Action" inspection reports issued by NC DOT Roadside Environmental Unit.

Education Program Status Report-- Ms. Jana Vo presented a report on the past and current projects in the Sediment Education Program.

Sediment Program Status Report-- Mr. Nevils provided a report on LQS's 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. Mr. Nevils also thanked the Land Quality staff for their work.

CONCLUSION

Remarks by the Director – Mr. Simons thanked the Commissioners for their support.

Remarks by the Commission Members – Ms. Chiosso spoke on the death of Mr. James Willis, E&SC Inspector for Chatham County. Mr. McPherson thanked everyone and said he had enjoyed being on the Commission.

Remarks by the Chairman – Mr. Brewer announced that Mr. McPherson will be leaving and will be replaced by Manly West of the Soil and Water Conservation Commission

Adjournment--As there was no further business, Chairman Brewer adjourned the meeting.


Stephanie Lane, Recording Secretary


James D. Simons, Director