

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
FEBRUARY 18, 2010
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 18, 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

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
Mr. Ted Sherrod, NCDOT
Mr. David Harris, NCDOT
Mr. Michael Shumsky, NCDOT
Mr. Don Lee, NCDOT
Mr. Jon Nance, NCDOT
Mr. David Henderson, NCDOT
Ms. Brenda Menard, Assistant Attorney General
Ms. Jean Spooner, NCSU
Mr. Rufus Allen, Assistant Attorney General
Mr. Jason Geary, City of Burlington
Mr. Tony Johnson, Cabarrus County
Mr. Zahid Khan, Land Quality, Mooresville
Mr. Matt Flynn, Town of Cary
Mr. Jim Lowry, NC Utility Contractors Association

Mr. Charlie Whaley, Land Quality, Mooresville
Mr. Greg Greene, Rowan County
Mr. Berry Jenkins, Carolina AGC
Ms. Amy Simes, NC DENR
Ms. Dianne Reid, DWQ
Mr. Bradley Bennett, DWQ
Mr. Shelton Sullivan, DWQ
Mr. Boyd DeVane, DWQ
Mr. Matt Matthews, DWQ
Mr. John Hennessey, DWQ
Ms. Katie Merritt, DWQ
Mr. Leon M. Killian, Haywood County
Mr. Marty Stamey, Haywood County
Mr. Marc Pruett, Haywood County
Mr. David Cotton, Haywood County

PRELIMINARY MATTERS

Mr. Brewer called the meeting to order and read Executive Order No. 34

Mr. Esqueda recused himself from Action Item A, Local Program Review pertaining to the Town of Wake Forest delegated program.

Those in attendance introduced themselves.

Mr. Brewer called for approval of the minutes for the November 12, 2009 meeting. The motion to approve the minutes was made by Dr. Miller. Mr. Glass seconded the motion, and it carried unanimously.

Mr. Brewer also called for approval of the minutes for the December 14, 2009 meeting. The motion to approve the minutes was made by Mr. Bryson. Mr. Vick seconded the motion, and it carried unanimously.

Governor's Executive Order No. 34 – Mr. Rufus Allen

Mr. Allen discussed the Governor's Executive Order No. 34 Ethics and Attendance Standards for Gubernatorial Appointees to Boards.

ACTION ITEMS

Local Program Reviews - Mr. Gowon Goode

Mr. Goode reported on the reviews of the delegated local programs of the City of Burlington, City of Winston-Salem/Forsyth County, Town of Holly Springs, Town of Cary, Town of Wake Forest and Cabarrus County.

City of Burlington

The City Burlington Local Program was reviewed February 11, 2010. Copy of report attached to the original minutes. Currently a staff of one provides one full-time equivalent for sedimentation and erosion control. Staff has approved two plans and conducted eighteen inspections with the issuance of one Notice of Violation since the last review. No Civil Penalties or Stop Work Orders have been issued.

Four projects were evaluated including two projects found out of compliance on August 6, 2009. Three of the four projects evaluated were compliant with the Sedimentation Pollution Control Act (SPCA) and Local Ordinance.

Previous issues addressed during the last review appear to have been adequately corrected. The City has shown great improvement since the last review.

Staff recommended continued delegation of the program. Mr. Bryson made a motion to continue delegation to the City of Burlington. Mr. Weintraub seconded the motion, and it carried unanimously.

City of Winston-Salem/Forsyth County

The City of Winston-Salem/Forsyth County Local Program was reviewed November 10, 2009. Copy of report attached to the original minutes. Currently a staff of five is dedicated to sedimentation and erosion control. There are currently 63 active projects. The staff has approved 105 projects and has conducted 2767 inspections last year. Twenty seven Notices of Violations have been issued with eight Civil Penalties assessed. General documentation and the documentation of plan reviews were good. Files contained the necessary documentation and inspections and written reports were kept in the files reviewed. Data on enforcement actions were detailed and readily available. A total of 12 sites were reviewed. Four sites were noncompliant with the SPCA and the Local Ordinance. The City is currently taking measures to bring the noncompliant sites into compliance.

Staff recommended continued delegation of the program. Mr. Glass made a motion to continue delegation to the City of Winston-Salem/Forsyth County. Dr. Voiland seconded the motion, and it carried unanimously.

Town of Holly Springs

The Town of Holly Springs' Local Program was reviewed December 15, 2009. Copy of report attached to the original minutes. Currently a staff of five contributes approximately two and a half full time equivalents to erosion and sedimentation control. There are currently 48 active projects. The staff has approved 25 projects since last year with 53 plan disapprovals. The staff conducted 1650 inspections last year. The Town issued seven Notices of Violation, assessed eight Civil Penalties and issued no Stop Work Orders. To gain compliance, the Town uses its authority to revoke permits

for sites that are in violation.

Three projects were evaluated. General documentation was excellent. The Town keeps detailed files on each of the projects with various forms to help facilitate the needs of the program. Two sites were not in compliance with the SPCA.

Staff recommended continued delegation of the program. Dr. Miller made a motion to continue delegation to the Town of Holly Springs. Mr. Bryson seconded the motion, and it carried unanimously.

Town of Cary

The Town of Cary's delegated Local Program was reviewed January 12, 2010. Copy of report attached to the original minutes. Currently a staff of three contributes three full-time equivalents to sedimentation and erosion control. The Town currently has a vacancy for an inspector. There are currently 130 active projects. The staff has approved 50 projects in the past year. Four hundred fifty plans were disapproved. The staff conducted 2000 inspections in the past year. Ninety two Notices of Violation were issued and four Civil Penalties were assessed. The Town has been assessing Civil Penalties and holding up Certificates of Occupancy, which have kept the projects in their jurisdiction in compliance.

Six projects were evaluated. Three sites were found to be in compliance with the SPCA. The sedimentation and erosion control plans for each of the sites were adequate. The general documentation and the documentation of plans reviews were good.

The Town has "in-field" capabilities where plans, general documentation, and inspection reports are available at the site. Also, updated standards and specifications by the Town are located online via the Town of Cary's website. The Town has strict buffer rules and requires skimmers on all sediment basins. Detailed data on enforcement actions was available. The Town is currently taking measures to bring the noncompliant sites into compliance with Notices of Violation and enforcement.

Staff recommended continued delegation. Mr. Bryson made a motion to continue delegation to the Town of Cary. Ms. Chiosso seconded the motion, and it carried unanimously.

Town of Wake Forest

Mr. Esqueda recused himself from Action Item A, Local Program Review pertaining to the Town of Wake Forest delegated program.

The Town of Wake Forest's delegated Local Program was reviewed January 21, 2010. Copy of report attached to the original minutes. Currently a staff of seven contributes approximately four full time equivalents to erosion control. There are currently 51 active

projects. The staff has approved 16 projects since last year with nine disapprovals. The staff conducted 454 inspections last year. The Town issued 99 Notices of Violation, assessed four Civil Penalties and issued no Stop Work Orders. To gain compliance, the Town uses its authority to revoke permits for sites that are in violation.

Four projects were evaluated. Two sites were not in compliance with the Sedimentation Pollution Control Act.

General documentation was excellent. Records for the Town are kept hard copy; however with the transition to the "New World" program all records will be kept electronically. The Town has "in-field" capabilities where they will be able to access all information onsite.

Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation to the Town of Wake Forest. Mr. Glass seconded the motion, and it carried unanimously.

Cabarrus County

Cabarrus County's delegated Local Program was reviewed January 19, 2010. Copy of report attached to the original minutes. Currently a staff of two and a half contributes two and a half full-time equivalents to erosion control. The County currently has a vacancy for an inspector. There are currently 130 active projects. The staff has approved 50 projects in the past year. Thirty one plans were disapproved. The staff conducted 985 inspections in the past year. Ten Notices of Violation were issued and ten Civil Penalties were assessed totaling \$132,640.00. The County utilizes electronic software from Accela, which allows county departments to share information. This software allows Departments to flag a project at anytime the site is out of compliance with the County Ordinance. Projects that are flagged will not receive future permits or inspections until compliance is achieved. The Town has been assessing Civil Penalties and holding up Certificates of Occupancy which help keep the projects in their jurisdiction in compliance.

Four projects were evaluated. The sedimentation and erosion control plans for each of the sites and documentation of plan reviews were good and detailed. Three sites were noncompliant with the SPCA.

It was noted during this review that Cabarrus County E&SC staff is not inspecting sites at least monthly. Sites should be at a minimum inspected monthly with a written inspection report. County staff noted sites out of compliance and issued a deadline for corrective actions but there was no follow-up inspection to document efforts of compliance. Additional information should be noted on the inspection reports such as location of the sediment damage. Also, the Local Program should actively pursue groundcover on all sites in a timely manner and document this in writing. Additional training with a field calibration with the Regional Office is recommended. The County currently has a vacant staff position that is mostly dedicated to the erosion and

sediment control program. It would benefit the County to fill that position with a qualified person to inspect erosion and sedimentation control sites.

Land Quality staff's recommendation to the Sedimentation Control Commission is to continue the review until the May SCC Meeting and report on the progress of Cabarrus County's delegated local program. Meanwhile the Mooresville Regional Office should train and work with Cabarrus County staff to achieve an acceptable level of consistency in conducting inspections and writing inspection reports. Staff will conduct a follow-up review before the May SCC Meeting and report the findings.

Mr. Tony Johnson from the Cabarrus County program addressed the Commission and presented a letter in response to the review noting follow up inspections have been completed for the sites noted during the review and that they are now in compliance.

Ms. Chiosso made a motion to accept staff recommendation to continue review until the May 2010 meeting. Dr. Voiland seconded the motion, and it carried unanimously.

Mr. Glass recommended the SCC members review the Local Program Review Reports prior to the Commission meetings and then Mr. Goode could briefly discuss them rather than reading the entire report at the meetings. The Commission could then enter directly into discussion and approval/disapproval of continued delegation. Ms. Chiosso asked for the reports to include a brief track record on each program reviewed including the date established and whether they have had any probationary periods in the past. Ms. Smith and Mr. Weintraub requested the reports also reflect the track record of the local programs monthly report submissions.

INFORMATION ITEM

Water Quality Impacts and Enforcement Issues – Ms. Dianne Reid and Mr. John Hennessey

DWQ staff discussed the impacts of sedimentation on water quality and enforcement of the NPDES General Permit for Construction Activities. Ms. Reid discussed the impacts of sediment loading to streams and rivers, the standards used in identifying the problem areas and trends shown in collected data. Mr. Bradley Bennett discussed the new state NPDES General Permit for Construction Activities and the new federal Effluent Limitation Guidelines. Mr. Hennessey presented a summary of common problems observed during field inspections and discussed ways to address them. A copy of the presentation is attached to the original minutes.

ACTION ITEMS (cont'd)

NC DOT Annual Review – Mr. Gray Hauser, Mr. Jon Nance and Mr. Don Lee for NCDOT

Mr. Hauser and NC DOT presented results of the annual statewide review of the

NCDOT program delegation conducted September 29-October 1, 2009. Copies of the reports are attached to the original minutes.

The review team observed 16 projects which included eight contract construction projects, a design-build project, five maintenance/force account projects and two borrow areas operated by maintenance forces. The projects were chosen based on the stage of construction and the significance of the projects. Ten were rated good, four were rated fair and two were rated in poor condition.

Issues noted in the review included:

- The need for training of maintenance grading crews regarding compacting fill slopes and preparing graded slopes for seeding particularly for secondary roads in the mountains.
- A recommendation that NC DOT establish a training program to familiarize personnel on the requirements for trout buffers and how to design plans for disturbance in the buffer.
- A recommendation that NC DOT audit the inventory of their small waste and borrow areas, and develop erosion and sedimentation control plans as necessary, and reclaim sites in a timely manner.
- A recommendation for better technology transfer between districts to improve consistency in quality of erosion control plans and acceptance and utilization of new measures throughout the state.

Recommendations repeated from the previous annual report included:

1. Enhanced sediment settling with flocculants should be integrated with traditional practices when adequate surface area cannot be provided for measures. This should be implemented immediately on all maintenance projects as well as contract construction projects.
2. County maintenance forces and landscaping crews need to coordinate which unit will prepare steep back slopes or cut banks for seeding.
4. Sediment control should be kept in place until ground cover sufficient to restrain erosion is established rather than being removed for the convenience of the seeding contractor.
5. The Land Quality Section and NC DOT need to evaluate the need for environmental review of projects in High Quality Waters and Trout Waters, and achieve a consistent level of environmental protection.

Mr. Don Lee and Mr. Jon Nance responded on behalf of NC DOT. Mr. Don Lee addressed the recommendations made in the report. Mr. Jon Nance expressed the need to continue working closely with the Land Quality Section to improve erosion and sedimentation control measures.

Mr. Glass abstained from any discussions or voting. Mr. Vick made a motion to approve continued delegation. Dr. Kleiss seconded the motion, and it carried unanimously.

NC DOT Request for Delegation of NC DOT Rail Division to operate under the Division of Highways Delegation – Mr. Don Lee and Mr. Michael Shumsky

Mr. Don Lee and Mr. Michael Shumsky presented an agreement (copy attached to original minutes) between the NC Division of Highways and Rail Division made in January 2010, outlining the responsibilities of each party in administering their Erosion and Sedimentation Control Program. They requested delegation of NCDOT Rail Division to operate under the Division of Highways Delegation.

Mr. Vick made a motion to approve delegation. Dr. Voiland seconded the motion, and it carried unanimously.

NC DOT Request for NC Turnpike Authority to exclusively operate under the Division of Highways Delegation – Mr. Don Lee

Mr. Don Lee made a request for the NC Turnpike Authority to exclusively operate under the Division of Highways Delegation and presented General Assembly of NC Session law 2009-343 House Bill 1617 “An Act Transferring the Functions and Funds of the NC Turnpike Authority to the Department of Transportation to Conserve and Improve Efficiency”, (copy attached to original minutes) which was approved July 27, 2009.

Dr. Miller made a motion to approve delegation. Ms. Chiosso seconded, and it carried unanimously.

Adoption of Rule for Self-Inspection – Mr. Gray Hauser

Following the public notice period, Mr. Hauser presented rule 15A NCAC 04B.0131 Self-Inspections for approval as a final rule and submittal to the Rules Review Commission.

Mr. Bryson made a motion to adopt the rule and forward it to the Rules Review Commission. Ms. Smith seconded the motion, and it carried unanimously.

Recommendations of Subcommittee on Qualified Personnel – Mr. Mell Neils

Mr. Nevils presented the draft Bill to Amend SPCA to provide for Qualified Personnel to Conduct Inspections and the Resolution Regarding Qualified Inspection Personnel for North Carolina Construction Activities for Erosion and Sedimentation Control which had been signed by the Chairman upon final wording of the draft bill by the subcommittee. Copies attached to the original minutes.

Ms. Smith made a motion to approve the draft bill. Dr. Voiland seconded, and it carried unanimously.

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

Various members of the Commission nominated Mr. Roger Watson, Mr. Chris Roberts, Mr. Wyatt Brown and Mr. Jimmy Kizer for membership to the Technical Advisory Committee.

Mr. Glass made a motion to accept the nominations and have a Technical Advisory Committee of 15 members as nominated. Mr. Vick seconded the motion. Ms. Smith requested the nominations not be capped at 15 as she would like to find another nominee from the western part of the state and requested the motion be amended. Mr. Glass amended his motion to accept the nominations to the Technical Advisory Committee. Mr. Vick seconded the amended motion and it carried unanimously.

INFORMATION ITEMS

Haywood County Resolution – Mr. Marc Pruett

Mr. Marc Pruett and Mr. Leon Killian presented a Resolution (copy attached to the original minutes) passed at the Haywood County Sediment Control Board Regular Meeting on November 23, 2009 requesting the North Carolina Attorney General's Office provide legal services to any State approved local Erosion and Sedimentation Control Program in North Carolina who faces litigation arising out of the exercise of its concurrent jurisdiction with the State with regard to enforcement of its Sedimentation and Erosion Control Ordinance. Haywood County requested that the SCC endorse its request to the NC Department of Justice. After considerable discussion, the Commission noted it would like to further explore this issue with discussions with the Attorney General's Office and thanked the representatives of Haywood County for bringing this issue to their attention.

In the interest of time, Mr. Glass made a motion to delete Information Items C-G, I and J from the agenda. Dr. Miller seconded the motion, and it carried unanimously. Written reports were provided to the Commission and are attached to the original copy of the minutes.

Closed Session

Dr. Voiland read the Motion to Enter Closed Session.
Discussion of Pending Litigation – Nancy Hensley, Diane Kent, and Clean Water for N.C. vs NC DENR, Division of Land Resources, NC Supreme Court docket number 525A09.

CONCLUSION

Remarks by the Director - none
Remarks by the Commission Members - none

Remarks by the Chairman - none

Adjournment

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



Stephanie Lane, Recording Secretary



James D. Simons, Director