

**MINUTES**  
**NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION**  
**May 15, 2014**  
**GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING**  
**RALEIGH, NORTH CAROLINA**

The North Carolina Sedimentation Control Commission (SCC) met on May 15, 2014 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)  
Mr. Joe Glass  
Mr. Jonathan Bivens  
Mr. Tom Anderson  
Ms. Heather Jacobs Deck  
Mr. Randy Veltri  
Dr. Rich McLaughlin (Vice-Chair)  
Ms. Karla Hammer Knotts  
Dr. Susan White  
Mr. Kevin Martin

**OTHERS**

Mr. Tracy Davis, Director, DEMLR  
Mr. Toby Vinson, Section Chief, Land Quality Section  
Ms. Stephanie Lane, Administrative Secretary  
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section  
Mr. Brad Cole, Land Quality Section  
Ms. Lauren Witherspoon – City of Raleigh  
Mr. John Holley, Land Quality Section  
Mr. Shawn Maier, Assistant Attorney General  
Ms. Anna Martin, WRR  
Ms. Holly Miller – Town of Wake Forest  
Mr. Kirk Stafford – Town of Cary  
Ms. Natalie Landry – Chatham County  
Ms. Erin Wynia - NCLM  
Dr. Kenneth Taylor, MEC Commissioner

**PRELIMINARY MATTERS**

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

Ms. Smith indicated the agenda has been modified, due to staff requests, moving

“Assignment of E&SC Program to DEMLR Energy Section” to Action Item A. Action Item B was changed to “Education Contracts.” Information Item A was also moved in the agenda, following Action Item A.

Those in attendance introduced themselves.

Dr. White rescued herself from voting on Action Item B.

Ms. Smith asked for a motion to approve the minutes from the January 28 and February 20, 2014 meetings.

Mr. Anderson asked for the minutes to be changed to reflect Dr. White, rather than Ms. White.

The motion to approve the minutes with suggested changes was made by Mr. Glass. Ms. Deck seconded the motion, and it was approved unanimously.

## **ACTION ITEMS**

**Assignment of E&SC Program to DEMLR Energy Section for Oil and Gas Exploration and Development Land Disturbing Activities** – Dr. Kenneth Taylor & Mr. Tracy Davis

- i. Spatial Analysis of Known Shale Gas Resources and Existing Local Erosion and Sediment Control Program*
- ii. Revised Local Government MOA*
- iii. Assignment of Authority of the Erosion and Sediment Control Program*
- iv. SCC Program Assignment Letter to DENR Secretary*

Mr. Davis discussed the concept of a comprehensive oil and gas environmental permit issued through the DEMLR Energy Section.

### History:

- The General Assembly directed the MEC to study the possibility a single comprehensive environmental permit for oil and gas exploration and development activities
- The MEC's Coordinated Permit Study Group, chaired by Dr. Kenneth Taylor, consisted of representatives of various environmental regulatory Divisions within DENR, as well as representatives from the MEC and a representative of NCDOT
- After several meetings and detailed discussions of existing regulatory requirements that would apply to oil and gas exploration and development activities, most Divisions indicated that such activities would be below their threshold for permits, with the exception of the E&SC Program and the Stormwater Program, both under DEMLR

- To address such activities not currently covered by existing stormwater rules, DEMLR's Stormwater Program is pursuing administrative rulemaking through the Environmental Management Commission to address stormwater management at oil and gas operations, allowing for either individual permits or for its requirements to be addressed as part of a single comprehensive environmental permit
- This leaves the E&SC Program as the only outlier to a single comprehensive environmental permit

Action Requested of the SCC:

- After reviewing existing statutes and rules with SCC counsel, it was noted that the following actions could be taken to assign implementation of the SPCA at oil and gas exploration and development sites:
  - o Amend existing MOAs with delegated local programs to exclude jurisdiction for implementation of the SPCA for oil and gas exploration and development activities by retaining such jurisdiction with the SCC (NOTE: all other components of the delegated local E&SC program would remain intact)
  - o The SCC would assign its jurisdiction for implementation of the SPCA for oil and gas exploration and development land disturbing activities to the Secretary of DENR who would, in turn, assign such jurisdiction to DEMLR's Energy Section (the Section that will be conducting the review of all other surface and subsurface disturbances as part of a single comprehensive environmental permit – very similar to how DEMLR's Mining Program issues mining permits for various mining operations in the State)
  - o To accomplish this assignment, a letter from the SCC to the Secretary of DENR assigning this jurisdiction would be required, to which the terms of the assignment could be attached (a copy of the Assignment document and draft assignment letter is attached to the original minutes)
- Two items arise regarding the logistics of this assignment:
  - o When the assignment would be effective (Staff recommends today's date)
  - o Strategy to amend existing MOAs (Staff recommends contacting those delegated local E&SC programs in the known areas of potential oil and gas resources as identified by Dr. Taylor's analysis to put the revised MOAs in place by December 31, 2014; all other existing and new delegated local E&SC programs would be addressed as their local ordinances and MOAs are amended/put in place)

(NOTE: A copy of the redlined version of the Assignment letter that addresses the proper statutory citation and the effective date of the Assignment is attached to the original minutes)

Ms. Smith asked what timeline would be chosen for a coordinated permit review period. Mr. Davis indicated staff would respond to the erosion and sedimentation control components within the first 30 days, as required by statute. He added the approval

would be contingent upon satisfying all other oil and gas permit requirements, before land-disturbing activities could be conducted at the site. Dr. Taylor indicated staff is considering a 60 day review period for the remaining elements of the oil and gas permit, which will include a list of approximately 25 collaborating agencies for approval.

Ms. Deck asked if a definition of oil and gas exploration will be included in the MOA, to avoid confusion by the local governments. She noted that the Assignment of Authority document (page 3, paragraph 2) should specifically require that a status report of compliance and enforcement activities be included in the annual report to the SCC, similar to the other delegated authorities.

Mr. Bivens asked who will be responsible for review of the oil and gas permits. Mr. Davis indicated the Energy Section Central Office staff will review the oil and gas applications. The applicant will submit a plan showing erosion control, well pad construction, water treatment ponds, and roadways associated with oil and gas exploration and development activities. DEMLR would have jurisdiction from the state road onto the oil and gas drilling site, and anything outside of those limits would be within the jurisdiction of the delegated local program.

Mr. Bivens asked if someone on the oil and gas staff has experience in E&SC plan review. Mr. Davis indicated that one current employee has such background but that experienced in-house staff will need to train other staff members prior to the start of oil and gas permitting next year.

Ms. Smith asked if there is a funding proposal to acquire staffing in the regional offices to handle the compliance/enforcement for the oil and gas activities. Mr. Davis indicated that existing Energy Section Central Office staff will transition from rulemaking into the permit review and inspections role, similar to the local governments. Land Quality Regional Office staff may also be requested to provide comments on applications and assist with inspections, if needed.

Ms. Smith expressed concern over whether adequate funding is available for the inspection needs. Mr. Veltri added some of the sites will be geographically scattered throughout the state, which is another issue for staffing considerations based in the Central Office. Mr. Davis indicated DEMLR will evaluate and pursue additional resources, if necessary, as the program is implemented. He also noted that this is an assignment by the Commission, which can be reassigned to the Land Quality Section should any concerns arise with the Energy Section's implementation of the program.

Ms. Smith directed the group to the Assignment of Authority document (page 2, section C): "The Energy Section shall employ sufficient qualified staff to implement the erosion and sedimentation control program ...". She indicated "qualified staff" has not yet been defined by the group, and suggested the SCC may also wish to define "sufficient" for clarification. Mr. Davis added the SCC may make any changes deemed necessary to the document.

Mr. Taylor discussed an overview of the *Spatial Analysis of Known Shale Gas Resources and Existing Local Erosion and Sediment Control Program*. (Copy attached to original minutes)

Ms. Smith asked if there has been an impact study of parks in the potential areas of oil and gas. Dr. Taylor indicated that drilling is prohibited in any national park.

Ms. Deck asked if there will be coordination between the Energy Section and the local programs concerning compliance of oil and gas activities within their jurisdictions. Ms. Smith suggested sending notification to the local programs when an oil and gas permit is issued.

Mr. Davis was asked to restate the staff's recommendation:

- Approve the SCC retaining exclusive jurisdiction for implementation of the SPCA for oil and gas exploration and development land disturbing activities (which would require amendment of the existing MOA for existing and future delegated programs) and assign such jurisdiction to the Secretary of DENR (and in turn to DEMLR's Energy Section) subject to the conditions as outlined in the Assignment of Authority document. This action would be effective May 15, 2014 and staff would be directed to update existing MOAs with delegated local E&SC programs within the area of interest identified by Dr. Taylor as a priority, with the remaining existing delegated programs' MOAs being updated as their MOAs/existing local ordinances are updated. All newly delegated programs would use the updated MOA.

Ms. Smith asked if there are any questions related to the MOA amendment, Part D. Exclusive Jurisdiction. Ms. Deck suggested including a definition for oil and gas exploration and development. Mr. Bivens also asked for further clarification of development in Part D.

Mr. Davis suggested revising the wording to: "Relate to oil and gas exploration and development on the well pad site."

After much discussion, Ms. Smith suggested further investigation of "qualified staff" at the August 21 Commission meeting.

Mr. Glass asked if there could be concurrent jurisdiction for the oil and gas activities, until the SCC felt the Energy Program staff was adequately trained in plan reviews. Mr. Davis indicated the sediment fee for such projects will be deposited with the Energy Section funds, and joint efforts would pull from the LQS E&SC staffing resources. Mr. Maier indicated the statute provides for concurrent jurisdiction with local programs, but does not address transferring plan reviews between divisions within DENR.

Ms. Smith asked if there is another vehicle for concurrent jurisdiction, rather than the Assignment of Authority document. Mr. Martin indicated the SCC has the authority to rescind the assignment, should issues arise.

Ms. Smith requested an update from the Energy Section staff, at the end of the first quarter, on progress of the new industry and its permitting process. She asked Mr. Davis to report any operational needs, which the SCC may assist in obtaining.

Mr. Maier recommended revising the Assignment Letter to the Secretary to indicate: "The program assignment is effective on the date of your signature." Dr. White suggested updating the Assignment Letter to indicate "oil and gas exploration and development on the well pad site," to be consistent with revisions to the MOA.

Mr. Davis modified the staff recommendation to include all SCC amendments to the following three documents:

1. Memorandum of Agreement
  - a) Revise section D.2. to indicate: "Relate to oil and gas exploration and development on the well pad site."
2. Assignment of Authority
  - a) Revise paragraph 2, line 3 (at top) to include: "...on the well pad site."
  - b) Revise item C., line 1-2 to include: "...land disturbing activities at the well pad site..."
  - c) Revise page 2, item A., line 4 to include: "...development on well pad site,..."
  - d) Revise page 3 to include reporting on compliance and enforcement activities in the Annual Report to the SCC.
3. Letter of Assignment to Secretary
  - a) SCC action date: May 15, 2014
  - b) Revise paragraph 1, line 3 to include: "...on the well pad site..."
  - c) Revise paragraph 1, 2<sup>nd</sup> to the last line: "The program assignment is effective on the date of your signature." (and move to the last sentence of the paragraph)
  - d) Update the list of persons copied to remove Matthew Poling and to add the new Chief of the Energy Section

Mr. Martin made a motion to approve the documents as amended. Mr. Bivens seconded the motion, and it was approved unanimously.

Mr. Davis confirmed that all counties identified by Dr. Taylor as a priority, should take precedence to get the updated MOA approved. The remaining delegated program MOAs would be amended when presented to the SCC for other amendments or adoption.

## **INFORMATION ITEMS**

**Sedimentation Control Commission Fee Schedule Study Group** – Mr. Davis provided an overview of the fee schedule study group and its mission. Staff worked with the group to conduct analysis of local government fee structures.

Mr. Vinson summarized the results of a meeting between staff, members of the study group, and Assistant Secretary Gillespie regarding the SCC fee increase resolution and the analysis of local government fee structures. A three year phased approach to increase the sediment fee in smaller increments up to \$170/acre was discussed in order to gain legislative support. An additional study would be conducted, following the initial increase, to evaluate the benefit of the first year fee increase and determine the level of fee increase needed for years two and three of the phased fee increase process.

Mr. Vinson reported on the analysis of the erosion control plan review fee.

- i. State and Local Program Fee Schedule Statistics
- ii. Mock Expansion Budget

He indicated \$180 was the new median reached, based upon the analysis. However, the original resolution specified \$170, which was determined to be adequate for supporting 16 new positions needed to improve inspection frequency to approximately one inspection per every 4 months per project.

Ms. Smith asked staff to continue to provide the Commission updates on the status of the sediment fee increase at future meetings.

## **ACTION ITEMS (continued)**

### **Education Contracts – Ms. Evangelyn Lowery-Jacobs**

Ms. Lowery-Jacobs presented the recommendations of the SCC Education Committee for the FY2014 contract proposals.

1. Support for Annual Workshop and Awards Luncheon for Local Programs -- \$70,235
2. Support for Four Workshops to Train Design Professionals -- \$49,560

Ms. Knotts asked for a revision of the Narrative, Item 6, in “Support for Four Workshops to Train Design Professionals” to include the following:

- Clearly identify target audience for the workshops (i.e., contractors, interested citizens, etc.)
- Specify continuing education credits available to participants

Ms. Deck made a motion to approve the education contracts as amended. Dr. McLaughlin seconded the motion, and it was approved. (Dr. White recused herself from the vote.)

### **Local Program Reviews – Mr. Toby Vinson**

Mr. Vinson gave a report on the reviews of the Town of Holly Springs and Chatham County delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

#### Town of Holly Springs

On March 24, 2014, Joe Dupree, Karyn Pageau, and Matt Poling conducted a review of Town of Holly Springs' Local Program. Eleven positions contribute 2.2 full time equivalents. The Town currently has 65 projects and has reviewed 220 plans, with 75 approvals and 149 disapprovals. The Town has conducted 1,067 inspections, issued 4 notices of violations, 2 civil penalties, and 2 stop work orders in the past 12 months. Six projects were evaluated for the review. Two of the six projects inspected were in compliance.

The Town of Holly Springs' Local Program is visiting sites on a frequent basis. The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.
- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.

Staff recommends continued delegation.

#### Chatham County

On March 27, 2014, Joe Dupree, Ashley Rodgers, and Matt Poling conducted a review of Chatham County's Local Program. Two positions contribute 1.5 full time equivalents. The County currently has 91 projects and has reviewed 74 plans, with 54 approvals and 20 disapprovals. The County has conducted 293 inspections and issued 29 notices of violations in the past 12 months. Five projects were evaluated for the review. All projects inspected were in compliance.

Chatham County's Local Program is visiting sites on a frequent basis. The local program should also implement the following recommendations to improve the program:

- 1) Continue to check for self-inspection records on site.



- 2) Provide the new combined self-inspection form when approving erosion control plans.
- 3) Document when slopes have been graded or areas are left idle in the comments section of inspection reports in order to establish a time frame for establishing ground cover.

Mr. Martin made a motion to approve the continued delegation of the Town of Holly Springs and Chatham County Local Programs. Mr. Anderson seconded the motion, and it was approved unanimously.

Ms. Deck asked for an update on the status of the Raleigh Regional Office (RRO) enforcement on Riverwood Subdivision, which was discussed during the February 2014 SCC meeting. Mr. Vinson indicated LQS staff is working with DWR to achieve compliance on the site. An initial civil penalty request is being prepared for one developer associated with the site. RRO is working closely with Johnston County on recent Riverwood projects which have been submitted to the local program for their approval.

#### **Amendments to the Town of Wake Forest's Ordinance - Mr. Toby Vinson**

Mr. Vinson recommended approval of the Amendments to the Town of Wake Forest's Ordinance. Ms. Holly Miller, Assistant Town Engineer, discussed the amendments submitted for review.

Mr. Martin asked if the Watercourse Buffer Zone, included in Chapter 17 Definitions, is a proposed change to the ordinance. Ms. Miller indicated it is an expansion on a buffer definition, intended for clarification.

Mr. Martin expressed concern about the lack of definitions for wash and channel, which could raise potential questions. Ms. Miller indicated the Town defers to the Division of Water Resources (DWR) and the Corps of Engineers for all jurisdictional determinations.

Mr. Maier indicated those terms are not defined in the SPCA. The SCC is approving whether the ordinance meets the minimum requirements of the SPCA.

Mr. Martin suggested submitting a letter deferring to existing definitions adopted by the Corps of Engineers and the Division of Water Resources.

Mr. Anderson asked if there is a state moratorium on ordinances. Ms. Smith indicated the Town had a unanimous vote, which satisfies the requirement.

Dr. McLaughlin noted a typographical error in Section 12.5.4.D and 12.5.4.E, which should specify Fall~~s~~ Lake Watershed.

Mr. Martin made a motion to approve the Amendments to the Town of Wake Forest's Ordinance with the following conditions:

- 1) Changes to the spelling of Falls Lake Watershed, as noted.
- 2) Submittal of a letter of clarification to the SCC regarding deference to the Corps of Engineers or Division of Water Resources for the defining of lake, river, creek, stream, wash, channel or other body of water.

Mr. Bivens seconded the motion, and it was approved unanimously.

#### **Local Program Model Ordinance – Mr. Toby Vinson**

Mr. Vinson discussed issues raised during the February 20, 2014 SCC meeting regarding calendar days versus working days (page 11, (4)(a)). Mr. Maier indicated the Design Standards for the Upper Neuse River Basin section was added to the Model Ordinance directly from the Statute (S.L. 2009-486). There has been no further clarification in EMC rules on the term "days." The default meaning is a 24 hour period, which would infer calendar days.

Dr. McLaughin made a motion to approve the Model Ordinance with the insertion of calendar days. Mr. Veltri seconded the motion, and it was approved unanimously.

#### **INFORMATION ITEMS (continued)**

**Report on Local Program Assistance by Regional Offices –** Mr. Vinson presented a report on Regional Office Contacts with the Delegated Local Programs. A copy of this report is attached to the original minutes.

**Enforcement Report –** Mr. Vinson 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. Vinson presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

**NCDOT Report –** Mr. Vinson presented a report on Trout Buffer Waivers for Secondary Road Projects and ICA's that have been issued since February 20, 2014. A copy of this report is attached to the original minutes.

**Education Program Status Report –** Ms. Lowery-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. Vinson provided a report on the LQS current plan approval, inspection, and enforcement activities statewide.

**Land Quality Section Report** – Mr. Vinson provided a report on the current number of vacancies in the Section and other LQS activities and issues. He thanked staff for their efforts.

**CONCLUSION**

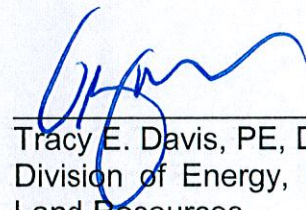
Remarks by the Director – none

Remarks by the Commission – none

Remarks by the Chair – Ms. Smith announced the end of her term on the SCC. She indicated this meeting may likely be her last, but she would continue to serve until a new appointment is made by the Governor. She expressed appreciation for the opportunity to serve on the Commission, and thanked everyone for their participation.

Adjournment – Ms. Deck made a motion to adjourn. Ms. Knotts seconded the motion, and it was approved unanimously. As there was no further business, Ms. Smith adjourned the meeting at 1:28 PM.

  
Stephanie Lane, Recording Secretary

  
Tracy E. Davis, PE, Director,  
Division of Energy, Mineral, and  
Land Resources