

**MINUTES**  
**NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION**  
**JANUARY 28, 2014**  
**TELEPHONE CONFERENCE CALL – 5<sup>TH</sup> FLOOR CONFERENCE ROOM,**  
**ARCHDALE BUILDING**  
**RALEIGH, NORTH CAROLINA**

The North Carolina Sedimentation Control Commission met on January 28, 2014 at 10:00 a.m. via telephone conference call from the 5<sup>th</sup> floor conference room in the Archdale Building, 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  
Ms. Charlotte Mitchell  
Mr. Tommy Anderson  
Ms. Heather Deck  
Mr. Randy Veltri  
Dr. Rich McLaughlin  
Ms. Karla Knotts  
Ms. Susan White  
Mr. Charles Hughes

**OTHERS**

Mr. Tracy Davis, Director, DEMLR  
Mr. Toby Vinson, Chief Engineer, Land Quality Section  
Ms. Stephanie Lane, Administrative Secretary  
Mr. John Holley, Land Quality Section  
Mr. Shawn Maier, Assistant Attorney General  
Mr. Gray Hauser, State Sediment and Erosion Control Specialist  
Mr. Matt Poling, Assistance State Sediment and Erosion Control Specialist  
Mr. Ken Taylor, State Geologist  
Ms. Dorothy Holly, Student

## **PRELIMINARY MATTERS**

### Call to Order

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

## **ACTION ITEMS**

Discussion and Approval of Concept of the Sediment and Erosion Control Commission to request to DENR Secretary to assign administration of the Sedimentation Pollution Control Act to the Division's Energy Section with regard to oil and gas exploration and development land disturbing activities.

Mr. Tracy Davis provided a background of the request as it relates to a study and rulemaking activities currently underway by the Mining and Energy Commission (MEC). The discussion referenced the document provided by Shawn Maier, Counsel to the Sedimentation Control Commission (SCC), attached to the original version of these minutes. The MEC was charged by the legislature to study permitting activities related to horizontal drilling and hydraulic fracturing in order that a single comprehensive environmental permit could be issued for oil and gas exploration and development activities. The MEC subsequently established a study group to evaluate this issue. There were two programs that appeared to conflict with a single comprehensive environmental permit, stormwater permitting and erosion and sedimentation control plan approvals, which did not immediately lend the opportunity to be included in a single comprehensive environmental permit.

Currently, the stormwater permitting NPDES program has no administrative rules in place to properly address stormwater management at oil and gas operations. As a result, DEMLR staff has been working with the Division of Water Resources and the Environmental Management Commission to develop stormwater rules appropriate for oil and gas operations. Draft stormwater management rules have been developed and will be going to the Environmental Management Commission for its review within the next several months. These rules will include a provision that the stormwater permit can be issued separately as it has been for other industries, or incorporated as part of an environmental permit issued by another agency. In this case, it would be incorporated as part of a single comprehensive environmental permit for oil and gas exploration and development activities issued by DEMLR's Energy Section's Oil and Gas Program.

With respect to the Sedimentation Pollution Control Act (SPCA), over 50 local governments have been delegated authority to implement the SPCA through local erosion and sedimentation control programs (E&SC). If such delegated programs are in place in areas that would be exploited for oil and gas resources, those delegated programs would preempt the ability to have a single comprehensive environmental permit for oil and gas exploration and development activities as E&SC plan approvals, inspection and enforcement for such activities would reside with the local government and not the state program.

As delegated E&SC programs are the only impediment to a single comprehensive environmental permit being issued at the state level, the MEC's study group requested DEMLR staff to investigate options under existing statutes and administrative rules for moving the implementation of the SPCA for oil and gas exploration and development to DEMLR's Energy Section, which will be coordinating and reviewing all other aspects of such operations. DEMLR staff solicited guidance from the SCC's Counsel, which precipitated DEMLR staff's proposal that is outlined on the second page of Mr. Maier's attached memorandum. To accomplish the transition of SPCA implementation from currently delegated local governments to DEMLR's Energy Section, for only oil and gas exploration and development land disturbing activities, a two part process would need to be followed.

The first step would be to amend the existing Memorandum of Agreement (MOA) between the SCC and existing delegated local governments to remove their jurisdiction over land disturbing activities related to oil and gas exploration and development. The second step would be for the SCC to assign implementation for the SPCA for only oil and gas exploration and development land disturbing activities to the Secretary of DENR, who would in turn assign this responsibility to DEMLR's Energy Section who would be responsible for issuing the single comprehensive environmental permit for oil and gas operations. The SCC's assignment to DENR as noted above would include any adjustments, reporting requirements, or any other stipulations the SCC determines are necessary to ensure proper implementation of the SPCA by DENR and DEMLR.

The MEC's final draft study group report is currently being pulled together and staff would like to seek approval of the SCC to move forward with this concept so that it could be included in Dr. Taylor's report of how the different DENR Divisions would handle this coordinated permitting and consolidated permit issuance process. If the SCC approves of this concept, DEMLR staff will prepare the appropriate documents for presentation to and review by the Commission at

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its February 2014 meeting. The deadline for submission of the MEC's final study group report to the legislature is March 1, 2014.

The change that would be made in the current MOA is in the jurisdictional section where only oil and gas exploration and development land disturbing activities would be exempted from the local program's delegation. Commission members raised a few concerns that staff members were able to address.

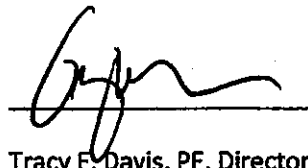
Mr. Poling recommended that the MOA be reviewed by all Commission members and brought before the Commission during the February meeting. Commission members agreed with this recommendation and it will be added to the agenda as an action item.

Mr. Anderson made the motion to approve the concept as described subject to further review and approval of associated documents so that this concept could be included in Dr. Taylor's final report that will be submitted to the Mining and Energy Commission for review in mid-February. Mrs. Knotts seconded the motion and it was approved unanimously.

After hearing a few concerns that local governments had shared with Mr. Anderson and from some local governments who attended the call, Ms. Deck made the motion to adjourn. Mr. Veltri seconded the motion and it was approved unanimously.



Stephanie Lane, Recording Secretary



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

MINUTES  
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION  
February 20, 2014  
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING  
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 20, 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  
Ms. Charlotte Mitchell  
Mr. Tom Anderson  
Ms. Heather Jacobs Deck  
Mr. Randy Veltri  
Dr. Rich McLaughlin  
Ms. Karla Hammer Knotts  
Ms. Susan White  
Mr. Kevin Martin

**OTHERS**

Mr. Tracy Davis, Director, DEMLR  
Mr. Toby Vinson, Chief Engineer, Land Quality Section  
Ms. Stephanie Lane, Administrative Secretary  
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section  
Mr. Matt Poling, Land Quality Section  
Mr. John Holley, Land Quality Section  
Mr. Shawn Maier, Assistant Attorney General  
Mr. Jamie Guerrero, Johnston County  
Mr. Joseph Alms, Gaston County  
Mr. Dan Lawson, Gaston County  
Ms. Holly Miller, Town of Wake Forest  
Mr. Theron Jackson, Guilford County  
Mr. Dan Simmons, Town of Pine Level  
Ms. Nicole Wilkinson, WRRRI  
Mr. Matthew Starr, Upper Neuse River Keeper

**PRELIMINARY MATTERS**

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

Those in attendance introduced themselves.

Ms. Smith asked for a motion to approve the minutes from the October 1, 2013, October 29, 2013, and November 7, 2013 meetings.

The motion to approve the minutes was made by Ms. Deck. Dr. McLaughlin seconded the motion, and it carried unanimously.

### **Reading of New Member's Economic Interest into Record**

Mr. Poling read the Evaluation of the Statement of Economic Interest for Ms. Karla Hammer Knotts from the State Ethics Commission. Ms. Knotts will fill the role of a representative nominated by the NC Home Builders Association. She is the co-owner of Knotts Development Resources, a residential development company, which is regulated by the Sedimentation Control Commission. In addition, Ms. Knotts and her spouse own threshold amounts of interest on multiple real estate related LLCs. As such, Ms. Knotts has a potential for conflict of interest and should exercise appropriate caution in the performance of her public duties should issues regarding Knotts Development Resources or any entity which she has a financial interest come before the Commission for official action.

Dr. Susan White fills the role of the Director of the Water Resources Research Institute on the Commission. She disclosed that WRRRI subcontracts with the Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources for Sediment and Erosion Control/Local Program workshops. As such, Dr. White has a potential for conflict of interest and should exercise appropriate caution in the performance of her public duties should the WRRRI come before the Commission for official action.

### **ACTION ITEMS**

Ms. Smith requested Information Item C to be moved in the Agenda to Action Item G. A letter will be compiled including local program responses to questions asked by the Environmental Review Commission, including comments made by those in attendance at the February 20, 2014 SCC meeting.

### **Delegate Johnston County Local Program Jurisdiction in the Towns of Clayton and Pine Level – Mr. Matt Poling**

Johnston County has entered into an agreement with the Towns of Clayton and Pine Level to expand their jurisdiction. The County would now handle all action within the Johnston County limits.

Representatives from the County and Towns were present, and commented on the benefits this agreement would have on their jurisdictions. Dr. McLaughlin asked if the County has sufficient resources to accommodate the delegation. Mr. Guerrero indicated the budget for FY14-15 will allow for additional staff for the new workload.

Staff recommended approving the request from the Town of Clayton, Pine Level, and Johnston County.

Mr. Glass made a motion to approve Johnston County Local Program Jurisdiction in the Towns of Clayton and Pine Level. Mr. Martin seconded the motion, and it was approved unanimously.

Ms. Deck mentioned an issue with a development in Johnston County, Riverwood Subdivision, which is being handled by the Raleigh Regional Office (RRO) rather than the County. Mr. Guerrero indicated the project was within the Town of Clayton, and the State has authority over the site. However, the County will continue to work with the RRO in pursuing violations on the site until the property comes back into compliance.

Ms. Smith asked if there has been a penalty assessment. Mr. Guerrero indicated the penalty is in process for the builder on the most recent violations. The developer will receive a NOV without penalties assessed at this time. The developer has been reactive to address issues to prevent offsite.

Mr. John Holley, supervisor of the RRO, discussed collaboration between the RRO and the builder to achieve compliance. A NOV is pending for the site, including additional enforcement, due to disturbance outside the approved plan limits.

#### **Local Program Reviews – Mr. Matt Poling**

Mr. Poling gave a report on the reviews of the City of Raleigh, and the Counties of Durham and Wake delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Ms. Deck asked if staff felt Wake County adequately addressed program issues in their response letter to the formal review. Mr. Poling indicated the County was only issuing inspection reports when sites were non-compliant. He added that the local program staff have been encouraged by Mr. Hauser and himself to issue written inspection reports once monthly, whether the site is compliant or not.

Ms. Deck asked how long approved plans are valid. Mr. Poling indicated approved plans are valid indefinitely, after the project starts. Mr. Vinson added approved plans that do not begin within three years must re-apply for an erosion and sedimentation control plan approval.

Mr. Martin asked if the Commission can require Wake County to submit monthly written inspection reports for projects. Mr. Glass indicated staff has requested it be included as a stipulation for their continued delegation.

Mr. Anderson asked if there is a standard for all local programs requiring monthly written inspection reports. Ms. Smith indicated the MOA requires documentation of

inspections in writing. Mr. Poling added he will direct Wake County to the MOA for support of the requirement.

### City of Raleigh

On November 5, 2013, Ashley Rodgers, John Holley, and Matt Poling conducted a review of City of Raleigh's Local Program. Fourteen positions contribute 7 full time equivalents. The city has 221 current projects. The city has reviewed 445 plans, with 197 approvals and 248 disapprovals. The city has conducted 7,675 inspections, issued 134 notices of violations, 5 civil penalties in the amount of \$580,000, and 1 stop work order in the past 12 months. Six projects were reviewed and inspected. Four of the six projects inspected were in compliance.

The City of Raleigh'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.

Staff recommends continued delegation.

Mr. Martin made a motion to approve the continued delegation of the City of Raleigh's Local Program. Mr. Veltri seconded the motion, and it was approved unanimously.

### Durham County

On November 21, 2013, Joe Dupree, Karyn Pageau, and Matt Poling conducted a review of Durham County's Local Program. Three positions contribute two full time equivalents. The County currently has 75 projects and has reviewed 100 plans, with 69 approvals and 31 disapprovals. The County has conducted 1,736 inspections, issued 13 notices of violations, and no civil penalties in the past 12 months. Five projects were reviewed and inspected. Four of the five sites were in compliance.

Durham 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.



Staff recommends continued delegation.

Dr. McLaughlin made a motion to approve the continued delegation of Durham County's Local Program. Mr. Martin seconded the motion, and it was approved unanimously.

### Wake County

On December 4, 2013, Joe Dupree, Karyn Pageau, Gray Hauser, and Matt Poling conducted a review of Wake County's Local Program. Eight positions contribute five full time equivalents. The County currently has 270 projects and has reviewed 145 plans, with 91 approvals and 54 disapprovals. The County has conducted 3,987 inspections, issued 7 notices of violations, 1 stop work order, and 2 civil penalties in the past 12 months. Six plans were reviewed in the office and five projects were evaluated in the field. Two of the five sites inspected in the field were in compliance.

Wake County's Local Program is visiting sites on a frequent basis. The local program should 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. The County should pursue providing ground cover more aggressively during site inspections. This necessitates providing written inspection reports, and not just making database entries.
- 4) As a minimum, inspection reports should be filled out on a monthly basis and placed in the project folder. Contractors should be made aware of how their projects are doing more often.
- 5) Plan reviews for the County should focus more on water conveyance. Slope drains should be required for slopes over 10 feet in height to insure that stormwater is being conveyed in a non-erosive manner down slopes.
- 6) Plan reviews for the County should require construction details and better construction sequences for stream crossings.

In addition, the following details and specifications provided by Wake County need to be updated:

- 1) The silt fence detail should include the burying of the toe of the fabric into a trench and not just covering the skirt. A 4" wide and 8" deep trench is standard.
- 2) The sediment storage volume for custom basins should be 3,600 cubic feet per disturbed acre since they do not dewater from the surface. Also, the bottom dewatering holes should be 18 inches above the bottom of the basin.

Staff recommends continued delegation contingent upon the County's adoption of these

recommendations.

Mr. Martin made a motion to approve the continued delegation of the Wake County Local Program with the understanding that the staff will clarify to the County that they are to comply with all conditions of the signed MOA, specifically concerning that a monthly compliance report be developed whether or not there are current violations. Ms. Deck seconded the motion, and it was approved unanimously.

#### **Memorandum of Agreement – Mr. Matt Poling**

Mr. Anderson requested that basic changes be made to the Memorandum of Agreement (MOA) to reflect some changes that have happened as a result of the Departmental reorganization.

Local programs have requested the ability to have the Commission approve MOAs with the contingency that programs have approval of their local government. Once the local government has approved the MOA, the SCC will not need to re-approve it. This will require that the sentence stating the local government must adopt the ordinance, before it is reviewed by the SCC, be revised on page two.

It was suggested that a change on page one read ... "However, the local government must submit the proposed local program ordinance to the Commission for review prior to adoption." The Commission will approve or disapprove, contingent upon the local government's approval, with no changes made to the ordinance as submitted to the Commission.

Dr. McLaughlin raised a concern that the term "competent" needs to be defined as having some sort of particular training. Chairman Smith suggested it could be an action item during the next Commission meeting that the term "competent" be defined.

Mr. Martin made a motion to accept the MOA as amended. Mr. Anderson seconded the motion, and it was approved unanimously.

#### **Local Program Model Ordinance – Mr. Matt Poling**

The revisions to the model ordinance are needed to reflect House Bill 74.

Mr. Anderson asked if the time period for ground cover should be specified as calendar or working days (page 11, 4(a-c)). Ms. Smith suggested getting clarification from the Attorney General's office on the matter.

After much discussion, the model ordinance will remain in draft form to allow time for clarification on issues raised by Commissioners. A motion was made by Mr. Glass to table the item at this time, and revisit the topic during the next Commission meeting. Mr. Martin seconded the motion, and it was approved unanimously.

## **Resolution to Amend the SPCA to Increase Plan Review Fees – Mr. Matt Poling**

The resolution is a proposal to increase the Sediment and Erosion Control Plan review fee to \$170 per disturbed acre or part thereof, as recommended in the October 1, 2012 report to the Environmental Review Commission. The \$170 is the median fee that Local Programs currently charge for sedimentation and erosion control. This Resolution for a sediment fee change will then be presented to the Governor for consideration.

Mr. Anderson asked if a study had been conducted to determine whether the fee change is adequate for staff needs. Mr. Davis indicated that while the average local program fee is \$250, his Division believes the \$170 per acre fee would be sufficient for the Division to implement the program. Mr. Davis also discussed the number of staff and staff time available to review plans, and continue to fulfill other job duties.

Mr. Martin suggested providing additional LQS data (inspections/FTE) to present to the Governor to support the plan review fee increase request. Ms. Smith proposed forming a workgroup to pool data to support the fee increase. A workgroup of four Commissioners will do additional research on an appropriate plan review fee, which will allow monthly inspections in addition to other job duties. Members of the workgroup include Mr. Veltri, Mr. Martin, Ms. Deck, and Chairwoman Smith.

Mr. Martin made a motion to approve the resolution, contingent upon findings from the workgroup demonstrating the \$170 fee is not excessive. The motion died.

After much discussion, Ms. Deck made a motion to table the decision until after the workgroup has had a chance to meet to discuss the fee, and a special Commission meeting will be held solely to vote on this item. Mr. Anderson seconded the motion, and it was approved unanimously.

## **Commission's response to Mr. Joe Ratchford's Letter, Applewood Properties, LLC v. New South Properties, LLC – Mr. Shawn Maier**

An amendment was made to the letter to send the Commission's condolences to Mr. Joe Ratchford's family concerning his recent death. Ms. Knotts made a motion to accept the letter. Mr. Glass seconded the motion, and it was approved unanimously.

Mr. Maier discussed the North Carolina Supreme Court decision regarding the Applewood Properties v. New South Properties case. The issue, perceived by the Supreme Court, was the local program issued notices of non-compliance, but never a NOV for offsite sedimentation. The Supreme Court decided there was no violation of the SPCA, since a NOV had not been issued for the site.

Mr. Alm and Mr. Lawson (Gaston County staff) discussed inspections of New South Properties, and issues leading to offsite sedimentation. Ms. Deck stated the Supreme Court decision was discussed at the recent local program workshop, and emphasis was placed on issuing NOVs to sites with offsite sedimentation.

Ms. Mitchell expressed concerns about the effects of this decision on citizens. It limits the reach of the SPCA, if NOV's have not been issued.

Ms. Smith suggested adding this topic to the May Commission meeting for further discussion.

### **Local Program Responses – Mr. Matt Poling**

The compilation of Local Program responses to questions asked by the Environmental Review Commission subcommittee that is studying the effects of local environmental ordinances being more stringent than state or federal laws and regulations was discussed.

Ms. Deck made a motion that the comments will be accompanied by a letter from the Commission supporting the need for Local Programs to be submitted to the Environmental Rules Review Commission. Mr. Anderson seconded the motion, and it was approved unanimously.

Ms. Miller, Town of Wake Forest, discussed the effects of more stringent local environmental ordinances.

### **INFORMATION ITEMS**

**Rules Review Committee Update** – Mr. Poling discussed the preliminary designations for each of the rules, within the North Carolina Administrative Code. DEMLR review has been delayed until January 2016 in the RRC draft schedule.

**Update on Assignment of E&SC Program to DEMLR Energy Section for Oil and Gas Exploration and Development Land Disturbing Activities** – Mr. Davis provided an update on the Mining and Energy Commission study report and initial drafts of the modified local government Memorandum of Agreement and the program assignment letter from the SCC to the Secretary of DENR.

Ms. Smith asked if inspections and enforcement would be performed. Mr. Davis indicated inspections and enforcement would be performed by DEMLR's Energy Section. He added that the Commission could include various expectations, within the assignment of authority to the Secretary, which would then be delegated to DEMLR.

Ms. Smith asked if there is any flexibility with the fee rate. Mr. Davis indicated the fee is bound by the SPCA, but subject to change with the law.

**Report on Local Program Assistance by Regional Offices** – Mr. Poling presented a report on Regional Office Contacts with the Town of Beech Mountain and Whispering Pines, the Counties of Rowan, Iredell, Catawba, Gaston, Lincoln, and Mecklenburg and the City of Newton. A copy of this report is attached to the original minutes.

**Report on Local Program Review Dates** – Mr. Poling presented the Annual Report on Local Program Review Dates and Staffing Statistics. A copy of this report is attached to the original minutes.

**Commissioner Term Dates** – Ms. Lowery-Jacobs gave an update on all Commissioner Term Appointment and Expiration Dates on the Membership List.

**Enforcement Report** – Mr. Poling gave a summary of the Attorney General's enforcement report. A copy of this report is attached to the original minutes. Mr. Poling suggested presenting future enforcement reports biannually, due to limited activity.

**Land Quality Section Active Sediment Cases Report** – Mr. Poling presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

**NCDOT Report** – Mr. Poling presented a report on Immediate Corrective Actions issued by NCDOT since November 1, 2013. 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.

Ms. White asked for an update on the electronic permitting program. Mr. Vinson updated the Commission on the progress of the Electronic Certification Licensing Inspections Permitting Services (ECLIPS) program. The program is intended to reduce file load, and also to speed up services. The system will handle electronic submission of all plans (including fees), plan reviews, inspections, and will allow submission of electronic inspection reports to clients. Initial training with the regional offices has taken place on the basic database functions. The second phase will be the activation of the portal, which allows electronic submission of plans by clients. The final phase is implementing the mobile inspections package. The release date will be advertised to all clients and customers.


## **CONCLUSION**

Remarks by the Director – none

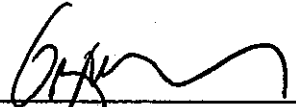
Remarks by the Commission – none

Remarks by the Chair – none

Adjournment – Mr. Glass made a motion to adjourn. Mr. Anderson seconded the motion, and it was approved unanimously. As there was no further business, Ms. Smith adjourned the meeting.



Stephanie Lane, Recording Secretary



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

MINUTES OF SPECIAL TELECONFERENCE MEETING OF THE  
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION'S  
FEE SCHEDULE STUDY WORKGROUP

March 19, 2014  
Archdale Building, Fifth Floor Conference Room  
Raleigh, North Carolina

The North Carolina Sedimentation Control Commission's Fee Schedule Study Workgroup met in special session on March 19, 2014 at 10:00 a.m. via teleconference. The following persons were in attendance for all or part of the meeting:

**COMMISSION MEMBERS**

Ms. Robin K. Smith, Chair (via teleconference)  
Mr. Randy Veltri (via teleconference)  
Mr. Kevin Martin (via teleconference)  
Ms. Heather Jacobs Deck

**OTHERS**

Mr. Toby Vinson, Acting Section Chief, Land Quality Section  
Mr. Matt Poling, Assistant State Sediment Specialist, Land Quality Section  
Ms. Evangelyn Lowery-Jacobs, Sediment Education Specialist, Land Quality Section

**PRELIMINARY MATTERS**

Chair Smith called the meeting to order and read the Ethics Statement and asked if there were any conflicts of interest.

Mr. Martin stated his clients obtain sediment and erosion control permits, and will be affected by this matter. It has been determined his participation will not be a conflict of interest.

Those in attendance via teleconference introduced themselves.

**ACTION ITEMS**

**Fee Schedule Study Workgroup – Chair Robin Smith**

Chair Smith stated that the workgroup has been charged with determining an appropriate value, based on financial analysis, to insert into the resolution passed by Sedimentation Control Commission at the February 20, 2014 meeting. The resolution originally specified a \$170 plan review fee per disturbed acre, but the workgroup was asked to refine the number in preparation for discussion with Governor McCrory. She

indicated the resolution states that the SCC's 1997 Plan of Action Report recommended inspections be conducted on an average once per month.

Mr. Poling discussed an Excel spreadsheet depicting project counts and inspection statistics for the Local Programs (LPs). The data illustrates how the LPs are conducting business in comparison to the Land Quality Section's (LQS) inspection frequency.

Ms. Deck asked for clarification of "Inspections/Project." Mr. Poling indicated the number refers to the number of inspections during the project lifetime. He added that the LQS has conducted approximately 1,100 inspections/FTE (Full Time Equivalent), which indicates staff is performing at a more efficient rate than the LPs.

Ms. Smith stated the inspection frequency is higher for the larger municipalities, and the state handles most of the rural areas without LPs. The travel time for state inspectors should also be considered as a factor in calculating fees, in addition to inspection efficiency. Staff noted that the additional driving distance is incorporated into the fee, which is utilized in the projected salary calculation. Mr. Vinson indicated that \$13,440/FTE/year for transportation has been included in the projected budget analysis which would yield enough funds for an additional 16 staff members.

Ms. Smith asked if the additional 16 staff will result in an inspection frequency of once per four months. Mr. Poling indicated the additional staff would likely allow for inspections once per four months per project.

Ms. Smith asked how the analysis for 16 FTEs would change in order to achieve inspections once per month. Mr. Poling indicated 133-160 FTEs would enable inspections once per month, based upon the linear regression chart ("Project Count/FTE Compared to Inspection Frequency"). Mr. Vinson added that to achieve 133 FTEs would require an additional cost of \$595, on top of the current \$65 per acre plan review fee. Thus, a total fee of \$660 per acre would be required to achieve once per month inspections.

Ms. Deck stated the monthly inspection information should be included in the resolution to demonstrate the fee request is within the realm of understanding of the circumstances the sediment program currently faces. Ms. Smith indicated the information should also clarify that the statistics refer to open project sites. She added the analysis does show the current departmental deficiency in staffing.

Mr. Poling referred the group to the "Inspection Frequency/FTE Compared to Fee Collection" chart for analysis. Based upon the chart, once per month inspection frequency would require a fee of \$1,300 for a 5 acre site (\$260/acre).



Mr. Poling indicated the final chart ("Project Count/FTE Compared to Fee Collection") demonstrates approximately 90% of the LPs are captured, when evaluating 100 projects/FTE compared to \$3,000 for 5 acre site (\$600/acre). Ms. Smith indicated chart 3 supports chart 1, and the review fee would need to be in the range of \$600-660 to allow for monthly inspections.

Mr. Vinson added that the \$170 specified in the resolution was the median fee requested in previous sessions to allow for approximately 11-12 additional positions. Ms. Deck indicated the new median, based upon current data, is \$180.

Ms. Deck stated there is significant evidence to support the increased fee request. Mr. Martin added the findings need to be written up to accompany the resolution.

Mr. Vinson asked if members would like the information to include a comparison of inspection frequency. Ms. Deck indicated a table would likely be easier to follow than the multiple graphs.

Ms. Deck asked if the resolution should be amended to identify the fee required for monthly inspections, in addition to the proposed \$170 fee increase. Ms. Smith indicated the approved resolution should not be changed, but various scenarios should be discussed during the meeting with the Governor. The only change that has been authorized by the Commission is assigning the fee value, determined to be adequate by the workgroup.

Mr. Veltri asked how many projects are active per year. Mr. Vinson indicated about 8,000, which are ongoing projects.

Mr. Veltri suggested including a breakdown of the active projects (i.e., public utilities, governmental, commercial, industrial, and residential) to illustrate who the customers are. Mr. Vinson indicated the information is not currently tracked, but staff could attempt to pool the data.

Ms. Smith indicated the information should be gathered quickly, in order to meet with the Governor prior to the May 14 legislative short session. She asked how soon the project analysis could be available. Mr. Veltri suggested evaluating public v. private projects to facilitate time.

Ms. Smith asked staff to prepare a bulleted list of talking points from the workgroup meeting, and edit the resolution to include the appropriate fee to facilitate monthly inspections. The analysis of public vs. private could be performed if time allows, and incorporated into conversations with the Governor. She asked staff to provide a point of contact for the workgroup to arrange a meeting with the Governor in mid to late April.

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Mr. Martin indicated the information should detail the last fee increase. Ms. Deck asked when the last fee increase was. Mr. Poling indicated there was a \$15 increase in the 1990s.

Ms. Smith asked staff to include the statistics detailing the rate of LQS inspections/FTE vs. LP inspections/FTE. Mr. Martin suggested comparing level of work of state staff, noting site inspection frequency is lower in addition to significant travel time.

Ms. Smith asked staff to make it clear that the data was evaluated in two different regression analyses that supported the range of \$600-660 to allow for monthly inspections. Ms. Deck added the evaluation was a conservative estimate, based upon comparison with the LP data. Ms. Smith indicated the numbers from the current analysis are similar to those generated by the SCC workgroup's 1997 Plan of Action.

Mr. Poling asked how many projects/FTE were estimated in the 1997 Plan of Action. Ms. Smith indicated 45 projects/FTE for a total of 22 FTEs. Mr. Poling added the current analysis is based upon 100 projects/FTE.

## CONCLUSION

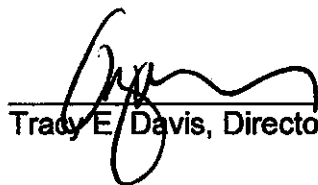
**Remarks by the Commission -- None**

**Remarks by the Chair -- None**

**Adjournment** -- Following discussion regarding the fee schedule study, Ms. Deck made a motion, seconded by Mr. Martin, to adjourn the meeting. The vote was unanimous.

As there was no further business, Ms. Smith adjourned the meeting at 11:13 a.m.

  
Stephanie Lane, Recording Secretary

  
Tracy E. Davis, Director, DEMLR