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

The North Carolina Sedimentation Control Commission met on November 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
Mr. Jonathan Bivens
Ms. Natalie Berry
Ms. Heather Jacobs Deck
Mr. Gordon Randolph
Ms. Karla Hammer Knotts
Dr. Susan White
Dr. John Havlin

OTHERS

Mr. Toby Vinson, Section Chief, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section
Ms. Ashley Rodgers, Sedimentation Specialist, Land Quality Section
Ms. Karyn Pageau, Assistant Sediment Specialist, Land Quality Section
Mr. John Holley, Land Quality Section, RRO
Mr. Brad Cole, Land Quality Section, FRO
Mr. Carlos Bagley, Johnston County
Mr. Shawn Maier, Attorney General's Office
Mr. James Bernier, Jr., Attorney General's Office
Ms. Lisa Martin, NC Homebuilders Association
Mr. Steven Webb, NC Homebuilders Association
Mr. Clark Thomas, City of Henderson
Mr. Greg Perfetti, NC DOT
Mr. Johnnie Marion, NC DOT
Mr. Don Lee, NC DOT
Mr. David Harris, NC DOT
Mr. Matthew Starr, Upper Neuse Riverkeeper
Mr. Kirk Stafford, Town of Cary

PRELIMINARY MATTERS

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

Those in attendance introduced themselves.

Ms. Rodgers read the Evaluation of the Statement of Economic Interest for Ms. Natalie Berry from the State Ethics Commission. There were no findings of an actual conflict of interest, but there was a potential for a conflict of interest. The potential for conflict of interest did not prohibit Ms. Berry from service on the Commission; however, she may need to recuse herself should any action regarding Henderson County come before the Commission. Ms. Berry will fill the role of a local government representative on the Commission.

Chair Smith asked for a motion to approve the minutes from the August 21, 2014 meeting. The motion to approve the minutes was made by Mr. Bivens. Ms. Knotts seconded the motion, and it carried unanimously.

Chair Smith asked for a motion to approve the minutes from the September 5, 2014 meeting. The motion to approve the minutes was made by Dr. Havlin. Mr. Glass seconded the motion, and it carried unanimously.

ACTION ITEMS

Annual Review of Delegation to NCDOT – Ms. Ashley Rodgers

The Land Quality Section reviewed the program delegation to the North Carolina Department of Transportation (NCDOT) on September 9-11 and September 17-18, 2014. A copy of the NCDOT Annual Review Report to the SCC is attached to the original minutes.

Ms. Rodgers summarized the review of 16 NCDOT projects. The projects selected for review were a mix of contract construction, design-build, and maintenance projects across the state. Projects were generally between 30 and 70 percent complete. Fifteen contract construction or design-build projects and one maintenance/force account projects were chosen based on the stage of construction and the significance of the project.

Ms. Rodgers discussed the NCDOT delegation (including plan design/review and inspections) and the annual review process undertaken by Land Quality. The projects are evaluated on a rating of "Poor, Fair, or Good." Eight of the contract projects reviewed were considered Good, five were rated Fair or Fair +, and one was rated Poor. The only maintenance project evaluated was considered Good.

Ms. Knotts inquired as to the "Poor, Fair, or Good" system and how it correlates to the NCDOT inspection numbers (1-10) and Land Quality's in and out of compliance. Ms. Rodgers and Mr. Harris of NCDOT clarified this system. Ms. Rodgers further explained that Good is clearly in compliance, Poor is out of compliance, and Fair sites could be either in or out of compliance.

Chair Smith asked whether the slight deposition of sediment noted at the ditch outlet of the Division 1 project could have been avoided. Ms. Rodgers replied that it was difficult to tell, due to the amount of rain (7+ inches in the previous 2 days) and the fact that LQS had not previously inspected this site; however, she noted that the amount of deposition was very small. Ms. Knotts questioned why the Division 1 project summary noted that some measures had not been installed, as per the plan. Ms. Rodgers noted that NCDOT has the authority to make field changes to the plan, which is different than the delegation to local government programs.

Commissioners had several questions regarding the NC 24 Widening project in Division 3. Ms. Knotts questioned whether this site would have received an NOV from Land Quality for the maintenance issues and slight off-site sedimentation. Ms. Rodgers noted that the site was out of compliance and an NOV could have been issued, but was not due to the very slight amount of sedimentation. Ms. Deck noted that it would be helpful to see previous NCDOT inspection scores for all projects. She also questioned whether ICAs had been issued onsite and noted that the SCC had discussed at a previous meeting the need to issue NOVs for any off site sedimentation. Chair Smith reinforced that the Commission wanted an NOV to be issued by local governments and LQS staff for all off-site sedimentation to protect the public's right to sue under the Sediment Act. Mr. Bivens noted that his recollection was that the Commission had intended that an NOV be automatically issued for off-site sedimentation for sites begun without a plan, or without measures installed properly per the plan. He noted that plans are only designed for a specific storm, and even perfectly installed measures may not be 100% efficient. Ms. Deck asked whether the storm exceeded the design storm; Ms. Rodgers was not sure, but replied that it was close if not exceeding the design event. Ms. Rodgers noted that the sedimentation was less than a 5 gallon bucket and Ms. Pageau added that it was slight enough that it could be removed within an hour or less. Chair Smith noted that staff may need a more detailed policy and training with respect to offsite sedimentation and when NOVs should be issued.

Dr. White requested that staff also provide an evaluation of in or out of compliance with next year's report. Chair Smith also noted that it might be helpful to report whether a design storm event had been exceeded in instances where off-site sedimentation had occurred.

During the discussion of the NC-18 and I-40 Interchange in Burke County, Chair Smith questioned whether an NOV had been issued on the site. Ms. Rodgers noted that one had not, although the conditions onsite could have justified an NOV. Mr. Bivens noted that he wanted to hear from NCDOT regarding their processes and the recourse options that the public has for issues with DOT projects.

The following issues were noted and recommendations were made for corrections:

1. Concrete Washouts – Any project involving concrete (including those with sidewalks or curb and gutter) should have a designated concrete washout location identified on the approved plan, and a detail(s) provided for its construction/maintenance. Concrete washouts (and earthen material stockpiles) should be located at least 50 feet from storm drains and streams unless no reasonable alternatives are available.

2. Ground Cover During Construction Delays – With the delays in projects (due to utility work or other circumstances), care needs to be taken to provide appropriate stabilization of sites that are inactive for a given time. Measures still need to be maintained onsite unless drainage areas are fully stabilized. If areas will not be worked for at least 3-4 months, a permanent seeding would be more appropriate than temporary seeding.

Ms. Rodgers also discussed planned changes to the review procedure next year, including random inspections through the Divisions and throughout the year, so that all inspections would not be done during the same general time frame or weather events. Mr. Glass questioned why Division 6, 11, and 12 were not represented during this review. He said it would be preferable to have all Division represented. Ms. Rodgers noted that it was a scheduling issue, and that the sites were chosen to represent the different types of projects DOT had throughout the state. Dr. White questioned how many sites are typically inspected during the NCDOT review and whether that was an adequate sample. Ms. Rodgers replied that approximately 14 projects are typically reviewed, and that the projects chosen are designed to provide a good cross section and sample of the overall NCDOT workload.

NCDOT Report on Delegated Program -- Mr. Don Lee

Mr. Lee discussed the NCDOT submitted annual report. He stressed that an ICA is NCDOT's internal warning to contractors and staff that immediate corrective actions are needed. If NCDOT issues an ICA, then it is treated internally similarly to an NOV but is not statutorily the same. It is understood that if an ICA is issued, then an NOV for the site could be warranted. The Roadside Environmental Unit inspects sites once per month, but other NCDOT staff inspect sites daily. If an ICA is issued, an ICA extension may be issued up to 2 times if progress is being made but a stop-work order is also an option if corrective action is not progressing adequately (although this has not needed to be used yet). Mr. Lee also stressed that cross training is undertaken yearly with Land Quality Staff.

Mr. Lee also addressed the Burke County project, concurring with the Poor rating. He noted the issues onsite were the result of construction delays, and a lack of attention to maintenance of the inactive site while staff focused on active construction. Mr. Bivens

noted that the Salem Creek Connector project was a design build project rated "Good", and that this success should be noted in light of the fact that design build projects had been a concern of Land Quality staff and the Commission in years past. He commended NCDOT for their success with design build projects and the additional certification and inspection programs required by NCDOT.

Chair Smith asked about the internal processes for sites with persistent maintenance issues. Mr. Lee responded that issues are noted on inspections and that ICAs have been issued for specific areas where maintenance has not been done. Chair Smith also asked Mr. Lee to elaborate on options for citizens who may have been affected by sedimentation of DOT projects. Mr. Lee responded that affected citizens who believe they have incurred damage can go through the tort claim process, which is separate from the delegation and process under the Sediment Act.

Mr. Randolph asked whether ICAs are sent to Land Quality. Mr. Lee noted that all ICAs are automatically sent to Land Quality staff. Mr. Bivens requested an elaboration of how ICAs are enforced with contractors. Mr. Lee responded that ICAs are treated internally as NOVs, usually triggering meetings between the contractor, Resident Engineer, and NCDOT staff to discuss the severity of the issues. Sometimes work stoppage (full or partial) is required.

Ms. Knotts had a question about PCN (permit consultation needed). Mr. Lee noted that sometimes several different agencies in DENR need to be contacted to discuss issues onsite. He gave the example of 401/404 issues, which may be noted during an erosion control inspection, but are not directly related to the E&SC delegation. The E&SC inspection is used as a mechanism to flag instances where other issues (like a 401/404) are noted. Ms. Knotts requested that a column for PCNs be added to the annual DOT report in the future.

Chair Smith noted that the Commission needed to read Mr. Randolph's Statement of Economic Interest into the record so that he could participate in the remainder of the meeting votes. Ms. Rodgers read the Evaluation of the Statement of Economic Interest for Mr. Gordon Randolph from the State Ethics Commission. There were no findings of an actual conflict of interest but there was a potential for a conflict of interest. The potential conflict identified was that Mr. Randolph serves as the Director of French Broad Electric, and it was noted that Mr. Randolph may need to recuse himself should issues regarding French Broad Electric come before the Commission. Mr. Randolph will fill the role of a utility company representative on the Commission.

Staff recommended continued delegation of the program and for NCDOT to address the issues noted. Mr. Glass made a motion to continue delegation of the program with implementation of staff recommendations. Mr. Bivens seconded the motion, and it was approved unanimously.

Local Program Reviews – Ms. Karyn Pageau

Ms. Pageau conducted reviews of the City of Wilson and City of Henderson delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes. Chair Smith and Ms. Deck noted that only the brief summary had been provided to the Commission, not the detailed summary. Ms. Rodgers apologized and responded that copies of the letters sent to the local programs would be provided for the next meeting.

City of Wilson

On October 13, 2014, Joe Dupree and Karyn Pageau conducted a review of the City of Wilson Local Program. This program had last been evaluated in January of 2013. One staff member contributes one full time equivalent to the erosion control program. The city has 4 active projects and has reviewed 6 plans, with 6 approvals and no disapprovals. The city has conducted 51 inspections, has issued 0 notice of violations, and assessed no civil penalties in the past 12 months. Five projects were reviewed.

The City of Wilson Local Program is visiting sites on a frequent basis, which is appreciated. The local program should implement the following recommendations to improve the program:

1) Continue to check for self-inspection records on site.
2) Remember to implement all of the new NPDES requirements in your plans. Include concrete washout locations and details on the drawings.
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. Ms. Deck made a motion for continued delegation. Dr. White seconded the motion, and it was approved unanimously.

City of Henderson

On October 14, 2014, Joe Dupree and Karyn Pageau conducted a review of the City of Henderson's Local Program. Two staff member contributes 1.0 full time equivalents to the erosion control program. The city has two active projects and has reviewed 4 plans, with 4 approvals and no disapprovals. The city has conducted several inspections, and has not issued any Notice of Violations or civil penalties in the past 12 months. Three projects were reviewed.

The City of Henderson's Local Program is visiting sites on a frequent basis, which is appreciated. The local program should implement the following recommendations to improve the program:

1) Continue to check for self-inspection records on site and provide the form

during plan review.
2) Please provide concrete washout areas when approving erosion control plans.
3) Remember to establish a timeline for establishing ground cover by documenting when slopes have been graded or areas are left idle.

Staff recommends continued delegation. Ms. Deck made a motion for continued delegation. Ms. Knotts seconded the motion, and it was approved unanimously.

Incorporation of the Town of Archer Lodge into Johnston County's Delegated Local Program – Ms. Ashley Rodgers

Johnston County seeks approval to incorporate the Town of Archer Lodge within its delegated Erosion Control Program. Mr. Carlos Bagley spoke briefly about the delegation request and the current staffing for the County program.

Ms. Knotts made a motion to approve the interlocal agreement between Archer Lodge and Johnston County. Mr. Bivens seconded the motion, and it was approved unanimously.

Memorandums of Agreement – Ms. Ashley Rodgers

The Town of Cary has submitted its updated Memorandum of Agreement with the Commission, to address the language changes with respect to jurisdiction over oil and gas development for well pad sites. Dr. White made a motion to approve the revised Memorandum of Agreement with the Town of Cary. Mr. Glass seconded the motion, and it was approved unanimously.

INFORMATION ITEMS

Sedimentation Control Commission Fee Schedule Study Group – Mr. Vinson provided a report on the status update on Fee Schedule study group. It was recommended that the membership of the group be evaluated, since Mr. Veltri is no longer serving on the Commission. Mr. Randolph volunteered to fill Mr. Veltri's spot on the Study Group. Ms. Knotts made a motion to assign Mr. Randolph to the workgroup. Mr. Glass seconded the motion, and it was approved unanimously. Mr. Vinson will provide the background information, current workgroup report, and approved resolution to Mr. Randolph.

Town of Wake Forest Revised Ordinance Updated – Ms. Rodgers provided an update on the formal recommendation from the SCC with respect to definitions of ambiguous terms noted in the Town of Wake Forest Revised Ordinance.

Report on Local Program Assistance by Regional Offices – Ms. Pageau 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 – Ms. Rodgers 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 – Ms. Rodgers presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

NCDOT Report – Ms. Rodgers presented a report on Trout Buffer Waivers for Secondary Road Projects and ICA's that have been issued since the previous SCC meeting. 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. Six fee based positions have been eliminated (these have been vacant for 2.5 years) and one other position was lost through budget cuts. Positions may be reestablished and filled once the sediment fee money is sufficient to sustain them. An update was provided on progress of the new AMANDA database. He thanked staff for their efforts.

CONCLUSION

Remarks by the Director – None

Remarks by the Commission – Ms. Knotts reminded Commission members of their responsibility to complete their ethics reviews.

Remarks by the Chair – Chair Smith noted that it was likely her last meeting on the Commission and expressed her thanks to her fellow Commissioners.

Adjournment – Mr. Bivens made a motion to adjourn. Ms. Deck seconded the motion, and it was approved unanimously. As there was no further business, Ms. Smith adjourned the meeting at 12:27 PM.

Stephanie Lane, Recording Secretary

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