

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
MAY 29, 2019
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 29, 2019 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

Dr. Susan White (Chair)
Mr. Jonathan Bivens
Ms. Natalie Berry
Mr. Michael Willis
Ms. Heather Deck
Mr. Mark Taylor (via phone)
Mr. Hartwell Carson (via phone)
Dr. Albert Rubin
Ms. Karla Knotts
Ms. LaToya Ogallo
Dr. John Havlin

OTHERS

Ms. Julie Coco, State Sedimentation Engineer, DEMLR
Mr. William (Toby) Vinson, Chief of Program Operations, DEMLR
Mr. S. Daniel Smith, Interim Director, DEMLR
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Mr. Taylor Young, Assistant State Sedimentation Specialist, DEMLR
Mr. Boyd DeVane, DEMLR
Mr. Matthew Gantt, Chief of Regional Operations, DEMLR
Ms. Mary S. Crawley, Assistant Attorney General, Attorney General's Office
Ms. Karyn Pageau, Wake County Government
Ms. Ashley Rodgers, City of Raleigh
Mr. Ryan Eaves, Durham County Government
Mr. Zac Lentz, DEQ-Winston-Salem Regional Office
Mr. Brad Burton, Town of Lake Lure
Mr. Kirk Stafford, Town of Cary
Mr. Tom Gerow, Jr., NC Forest Service
Ms. Jennifer Everett, NCDEQ
Mr. Jeremy Goodwin, NCDOT
Mr. Ben DeWit, NCDOT
Ms. Suzanne Mullins, NC League of Conservation Voters

Ms. Rachel Gonsenhauser, NC League of Conservation Voters
Ms. Julie Ventaloro, NCDEQ
Ms. Christy Simmons, NCDEQ
Mr. Phillip Reynolds, NCDOJ
Mr. Holm, TCF

PRELIMINARY MATTERS

Dr. White called the meeting to order.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts.

Dr. White asked for a motion to approve the minutes from the February 7, 2019 meeting. Ms. Deck moved to approve minutes from the February meeting. Mr. Bivens made a second; the motion passed and the minutes were approved. The minutes were signed.

ACTION ITEMS

Rule-Making Process – Mr. Boyd DeVane read through the proposed rules under 15A NCAC Chapter 04 (“Sediment Rules”) and presented DEMLR staff’s recommendations for revisions and changes. A table listing the Sediment Rules, DEMLR staff’s recommendations and proposed changes, and any amendments and changes made to the proposed rules by the Commission, is attached to these minutes.

Mr. Bivens moved to authorize staff to publish the Notice of Text and the Regulatory Impact Analysis for rule set 15A NCAC 04A as proposed. Ms. Deck made a second. The motion passed.

Mr. Bivens moved to authorize staff to publish the Notice of Text and the Regulatory Impact Analysis for rule set 15A NCAC 04B as changed and amended today with changes to rules 15A NCAC 04B .0107 and 15A NCAC 04B .0112, contingent that rules .0107 and .0112 as changed and amended today are reflected in the Regulatory Impact Analysis and approved by OSBM. Ms. Ogallo made a second. The motion passed.

Mr. Bivens moved to authorize staff to publish the Notice of Text and the Regulatory Impact Analysis for rule set 15A NCAC 04C as proposed. Dr. Havlin made a second. The motion passed.

Mr. Bivens moved to authorize staff to publish the Notice of Text and the Regulatory Impact Analysis for rule set 15A NCAC 04D as proposed. Ms. Deck made a second. The

motion passed.

Mr. Bivens moved to authorize staff to publish the Notice of Text and the Regulatory Impact Analysis for rule set 15A NCAC 04E as changed and amended today with changes to rule 15A NCAC 04E .0503, contingent that rule .0503 as changed and amended today is reflected in the Regulatory Impact Analysis and approved by OSBM. Dr. Havlin made a second. The motion passed.

Ms. Deck moved to authorize staff to compose a preamble to the proposed rules highlighting other things the Commission is requesting the public to consider. Ms. Ogallo made a second. The motion passed.

Mr. Bivens moved to authorize the appointment of Mr. Danny Smith, Interim Director of the Division of Energy, Mineral, and Land Resources (DEMLR), to serve as hearing officer for any public hearing to be held at a date determined by the publication of rules in conformance with the schedule for rulemaking as required by the Rules Review Commission. Dr. Havlin made a second. The motion passed.

Local Program Reviews, Recommendations and Votes on Delegation – Mr. Taylor Young summarized the DEMLR staff's review of programs from the Town of Lake Lure, the City of Charlotte, Lincoln County, Jackson County, and New Hanover County. Below are the results of these reviews.

The motions were as follows:

Town of Lake Lure: Ms. Deck moved to continue delegation with review until the August 2019 meeting. Mr. Bivens made a second. The Commission voted to continue delegation of authority for the program upon continued review. The motion passed.

City of Charlotte: Ms. Knotts moved to continue delegation. Ms. Ogallo made a second. The Commission voted to continue delegation of authority for the program. The motion passed.

Lincoln County: Ms. Deck moved to continue delegation. Dr. Rubin made a second. The Commission voted to continue delegation of authority for the program. The motion passed.

Jackson County: Mr. Bivens moved to continue delegation. Ms. Ogallo made a second. The Commission voted to continue delegation of authority for the program. The motion passed.

New Hanover County: Mr. Taylor moved to continue delegation with review until the August 2019 meeting. Ms. Deck made a second. Ms. Deck then moved to amend the motion to have DEMLR staff send a letter to county staff requesting that program staff address a memorandum sent to the regulated community from the County Engineer

regarding changes to the program. Ms. Berry requested that one of the projects reviewed by the DEMLR staff be questioned within this letter. Mr. Bivens made a second to the amendment. The amendment passed. The Commission then voted on the original motion as amended, to continue delegation of authority for the program, with continued review for the next three months until the August 2019 meeting, with DEMLR staff to send a letter to county staff. The motion passed. Ms. Ogallo requested a copy of the memorandum sent from the County Engineer be provided to the Commissioners at the next meeting.

INFORMATION ITEMS

Durham City/County Program Ordinance Review – Mr. Ryan Eaves presented proposed changes regarding their Unified Development Ordinance to the Commission members for comments.

At this point in the meeting, the Chairman informed the members that rule 15A NCAC 04B .0132 was not specifically discussed by staff during the proposed rules presentation. The Chairman asked if any members had any questions or concerns with rule 04B .0132 as proposed with only minor changes, which was voted to be published with rule set 04B. No discussion was needed as no members had any questions or concerns with the rule as proposed and voted to be published with rule set 04B. The action taken on rule set 04B stands.

NC DOT Report – Messrs. Ben DeWit and Jeremy Goodwin from the Roadside Environmental Unit presented an update on the Department's erosion and sedimentation control program. Handouts were provided. During fiscal year 2018, the Department reviewed 948 erosion control plans, conducted 5,307 compliance inspections, issued 7 Immediate Corrective Actions (ICAs), with no NOVs issued by the DEMLR. The Department maintains its relationship with NC State University in providing certification training and requirements from its consultants and contractors. Ms. Deck asked about the status of the program's review. Mr. DeWit stated that there have been four site reviews conducted so far, with additional reviews scheduled in June of 2019.

NC DOT Report – Ms. Julie Coco presented one Immediate Corrective Action report and one Trout Buffer Waiver as being issued within the quarterly reporting period.

Overview of the Remission Process – Ms. Coco reminded the members of the previously approved procedures for how the DEMLR handles penalty remission requests.

Update to the Program Evaluation Division Study – Mr. Vinson provided an update on Senate Bill 70. There has been no movement on this bill. Because there are monies involved, it is not subject to crossover deadlines. The possibility exists that it will be carried over into the next long session of the legislature. The DEMLR is moving forward with programmatic changes in anticipation of the passing of this bill. One of the provisions of

the bill will require a report to the Sedimentation Control Commission by January 1, 2020.

The Chairman postponed the presentations and discussions of all remaining information items until the next quarterly meeting in August.

CONCLUSION

Remarks by Chief of Program Operations – Mr. Vinson discussed the two vacancies within the Division. He introduced Mr. Gantt as the new Chief of Regional Operations. Mr. Vinson thanked the Commissioners for their support.

Remarks by Commission Members – none

Adjournment – Dr. White suggested to adjourn the meeting. Ms. Knotts made a motion to adjourn the meeting. Mr. Bivens made a second. The motion passed. The meeting was adjourned at approximately 2:57 PM.

Julie Coco, PE, State Sediment Engineer
Division of Energy, Mineral, and Land
Resources

William “Toby” Vinson, Jr., PE,
Chief of Program Operations
Division of Energy, Mineral, and Land
Resources

Dr. Susan White, Chair
Sedimentation Control Commission

Proposed Rules with changes (cross-out = recommended deletion.)	Type of Change	Commission Amendments	Motions & Vote
15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION ORGANIZATION	Updated addresses	None	
15A NCAC 04A .0105 DEFINITIONS	Added 3 definitions. Modified 11 definitions. Deleted 2 definitions.	None	
15A NCAC 04B .0105 PROTECTION OF PROPERTY	Removed the modifier “all reasonable.”	None	
15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES	Removed and/or replaced some vague terminology.	None	
15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY	Removed “15 working days” and clarified that the 90 calendar days applied only to “permanent” ground cover. Added a reference to the Construction General Permit.	Motion to amend paragraph (d) to substitute the word “approved” for “issued.”	Motion by Ms. Knotts. Second by Ms. Ogallo. Motion to amend passed.
15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD	Revised language for storm event calculations, including acceptance of different methodologies.	None	
15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION	Removed the statement regarding “Acceptable Management Measures.” Clarified “sinuous channels” language.	None	
15A NCAC 04B .0110 BORROW AND WASTE AREAS	Made minor grammar corrections.	None	
15A NCAC 04B .0111 ACCESS AND HAUL ROADS	Revised wording for clarity.	None	
15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES	DEMLR staff previously proposed repealing the rule. DEMLR staff changed its recommendation, and recommends keeping the rule as currently written.	Motion to keep the rule and to maintain the rule as currently written for public comment.	Motion by Ms. Deck. Second by Dr. Rubin. Motion passed.
15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE	Eliminated the adjective “necessary” and made minor format changes.	None	

15A NCAC 04B .0115 ADDITIONAL MEASURES	Made revisions for clarity and removed adjective “necessary.”	None	
15A NCAC 04B .0118 APPROVAL OF PLANS	<p>Made revisions to clarify the requirement that an approving agency must act within 30 days of receipt of a plan.</p> <p>Removed provisions for approval with “performance reservations,” (which are not provided in the statutes) and a statement on “rights to a contested case” and other provisions deemed inconsistent with the APA. (Administrative Procedure Act)</p>	None	
15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS	Two paragraphs related to staff inspections were deleted because wording in the statutes made them unnecessary. A statement on “preconstruction conferences” was rewritten to make it consistent with the statute.	None	
15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS	<p>Wording changes were made in the references to the NRCS Handbook 630 and options for substituting other criteria for runoff calculations.</p> <p>In paragraph (c), the existing provisions for requiring basin sizing based on “70% of the 40-micron particle” in HQW zones was replaced by specific sizing and design criteria</p> <p>In paragraph (e), the provision for ground cover within “15 working days or 60 calendar days” was removed.</p>	None	
15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS	Several changes were made for administrative	None	

	purposes but did not result in any substantive changes in rule implementation.		
15A NCAC 04B .0126 PLAN REVIEW APPLICATION FEE	Several changes were made for administrative purposes or to eliminate outdated provisions.	None	
15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE	Several changes were made for administrative purposes or to eliminate outdated provisions.	None	
15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE	Revised wording for clarity.	None	
15A NCAC 04B .0130 EMERGENCIES	Minor administrative changes were made.	None	
15A NCAC 04B .0131 SELF-INSPECTIONS	Much of the text of the rule was rewritten to be more consistent with the statutes and the existing federal stormwater permit. Sentences were added to provide clarity on issues such as “significant deviation” from a plan, and to explain that “visual verification” was allowed in some practices and measurement was required for others. Added a reference to the NCG01 General Permit requirements.	None	
15A NCAC 04B .0132 Design Standards for the Upper Neuse River Basin	Minor changes were made.	None	
15A NCAC 04C .0103 WHO MAY ASSESS	No changes.	None	
15A NCAC 04C .0106 CRITERIA	No changes.	None	
15A NCAC 04C .0107 PROCEDURES: NOTICES	Minor changes were made. Removed the vague term “reasonable particularity.”	None	

15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING	Recommend repealing the rule.	None	
15A NCAC 04C .0110 ADMINISTRATIVE HEARING	Recommend repealing the rule.	None	
15A NCAC 04C .0111 — FURTHER REMEDIES	Recommend repealing the rule.	None	
15A NCAC 04D .0102 — MODEL ORDINANCE	Recommend repealing the rule.	None	
15A NCAC 04E .0101 GENERAL PURPOSE	Recommend repealing the rule.	None	
15A NCAC 04E .0102 DEFINITIONS	Recommend repealing the rule.	None	
15A NCAC 04E .0104 COPIES OF RULES: INSPECTIONS	Minor administrative changes were made.	None	
15A NCAC 04E .0201 PETITIONS FOR RULEMAKING FORM AND CONTENT OF PETITION	The rule was rewritten to more-clearly outline procedures to help the petitioner and the Commission in dealing with rulemaking petitions.	None	
15A NCAC 04E .0203 DISPOSITION OF PETITIONS	Recommend repealing the rule.	None	
15A NCAC 04E .0403 — WRITTEN SUBMISSIONS	Recommend repealing the rule.	None	
15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION	Recommend repealing the rule.	None	
15A NCAC 04E .0406 — RECORD OF PROCEEDINGS	Recommend repealing the rule.	None	
15A NCAC 04E .0501 SUBJECTS OF DECLARATORY RULINGS	The rule was rewritten for clarity.	None	
15A NCAC 04E .0502 SUBMISSION OF REQUEST FOR RULING	The rule was rewritten for clarity.	None	

<p>15A NCAC 04E .0503 <u>DISPOSITION OF REQUESTS FOR DECLARATORY RULING</u> or <u>DISPOSITION OF REQUEST</u></p>	<p>Two different versions of the proposed rule were presented to the Commission.</p>	<p>Motion to amend rule .0503 to the proposed text of rule 15A NCAC .0503 titled "<u>Disposition of Request</u>," and containing paragraphs (a) through (h), as found on lines 51 – 56, located on page 21, and continuing on lines 1-39 on page 22 of the document provided to the Commission today titled Recommendations for Changes to the Sedimentation Control Rules.</p>	<p>Motion by Mr. Bivens. Second by Mr. Willis. Motion passed.</p>
<p>15A NCAC 04E .0504 — RECORD OF DECISION</p>	<p>Recommend repealing the rule.</p>	<p>None</p>	