

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
November 29, 2011
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 29, 2011 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. Robert Weintraub
Dr. Michael Voiland, Vice Chair
Ms. Heather Jacobs Deck
Dr. Rich McLaughlin
Mr. Randy Veltri
Mr. Manly West
Mr. Jonathan Bivens

OTHERS

Mr. Jim Simons, Director, Division of Land Resources
Mr. Gray Hauser, State Sedimentation Specialist, Land Quality Section
Ms. Stephanie Lane, Administrative Secretary
Mr. Mell Nevils, Section Chief, Land Quality Section
Mr. Tracy Davis, Chief Engineer, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. Rufus Allen, Assistant Attorney General
Mr. John Payne, Assistant Attorney General
Ms. Nicole Wilkinson, WRRRI
Mr. Berry Jenkins
Mr. David Harris, NCDOT
Mr. Don Lee, NCDOT
Mr. Ricky Greene, NCDOT
Ms. Johnnie Marion, NCDOT
Ms. Melanie McCaleb, NCSU Soil Science
Mr. Kirk Stafford, Town of Cary
Ms. Erin Wynia, NCLM

PRELIMINARY MATTERS

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

Those in attendance introduced themselves.

Ms. Smith called for approval of the minutes of the August 18, 2011 meeting.

The motion to approve the minutes was made by Mr. West. Mr. Glass seconded the motion, and it carried unanimously.

Mr. Glass recused himself from Action Item II. A, NCDOT Program.

Dr. Voiland recused himself from Action Item II. D, Contract Proposal to Survey Workshop Participants.

Reading of New Member's Economic Interest Statement into Record

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Ms. Heather Jacobs Deck from the State Ethics Commission. There was a potential for a conflict of interest. Ms. Deck will fill the role of a non-governmental conservationist on the Commission. She is employed by the Pamlico-Tar River Foundation, a non-profit organization to protect, preserve and promote the environmental quality of the Tar-Pamlico River and its watershed. She was informed to exercise appropriate caution in the performance of public duties should issues involving her employer come before the Commission. This would include recusing herself to the extent that her interests would influence her actions.

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Mr. Jonathan Bivens from the State Ethics Commission. There was a potential for a conflict of interest. Mr. Bivens will fill the role of a person nominated by the Carolinas Branch of the Associated General Contractors of America on the Commission. He is a Vice President with S. T. Wooten Corporation, a construction company that is subject to the rules and regulations of the Commission. He was informed to exercise appropriate caution in the performance of public duties should issues involving his employer come before the Commission. This would include recusing himself to the extent that his interests would influence his actions.

Action Items

NCDOT Annual Review – Mr. Gray Hauser and Mr. Mell Nevils

The Land Quality Section reviewed the program delegation to the Department of Transportation, Division of Highways (DOT) on September 27-29, 2011. Divisions 7-14 were reviewed by Gray Hauser and Divisions 1-6 were reviewed by Mell Nevils. Twelve contract construction projects and four maintenance projects were selected for review.

Mr. Hauser discussed the highlights of projects reviewed in the western part of North Carolina. There was one project of concern on NC 16, along a creek near the New River. No sedimentation was observed, despite close proximity to the streams.

Another notable project was the US 19 Bridge over the Nantahala River. It looked very good and much care was taken by the contractor to remove loose riprap from the river as bridge columns were completed.

There were some problem sites evaluated during the review. The US 421 project interchange in Guilford County had many slopes prepared to seed, but the seeding contractor did not arrive before heavy rains. The measures were functioning, but bare slopes contributed a heavy amount of turbidity to the stream. Seeding should have been done on a more frequent basis.

One maintenance project, SR 1134 (Harold Road), was having an issue with blasting damage to the buffer zone of the river. "Jersey" barrier had been substituted for blast mats, but a portion of the buffer had not been protected. An Immediate Corrective Action (ICA) had been issued, the day prior to the review, by the Roadside Environmental Technician. The damage had been cleaned and the river bank was matted prior to the review day. Planting the banks with willows during the dormant season was discussed.

Mr. Nevils discussed the highlights of projects reviewed in the eastern part of North Carolina. One project of interest was the Rail Line from NCRR to GTP. Mr. Nevils discussed the transition DOT has made toward building railroads. The banks of the project had been graded and the rail bed was installed. The ditches and banks had been stabilized, but the contractor was actively working on the rail bed. There was potential for the matting to become clogged with soil, which could lead to the possibility of offsite sediment. This aspect needs further evaluation by the DOT. Another issue is accessibility to the site, once the tracks are placed. Transferring from the clearing/grubbing stage to the final grading stage continues to be a problem for a number of projects. A recommendation was made to incorporate intermediate phases for larger projects with significant phase changes.

Mr. Hauser discussed issues noted during the review and suggested recommendations. Some of the skimmers used by NCDOT contractors dewater at a rapid rate. The flow rate of skimmers should be checked with a simple method such as a bucket and stopwatch, when basins are observed to rapidly dewater.

Ground cover on steep slopes is an issue. Blown straw had not been tacked, and had fallen off the slopes. Slopes steeper than 2:1 should have a mandatory standard established for mulching.

Blasting damage to vegetation in the stream buffer zone was noted in previous reviews, including this year. NCDOT has a set of general conditions that apply to work in the buffer zone and trout waters. District and county maintenance engineers need to adhere to these conditions.

NCDOT Report on Delegated Program -- Mr. Don Lee

Mr. Lee discussed the work implemented and accomplished in 2011. The designs produced by NCDOT have phased plans on 96% of projects. He acknowledged phasing plans has been a recurring issue for the Department on linear construction. The phasing occurs rapidly and is difficult for designers to interpret how contractors will proceed. The NCDOT specifications provide general parameters for the contractors, but do not dictate their work. He acknowledged the concern expressed by Land Quality and indicated improved communication/training would help people understand what to do.

NCDOT reviews 92% of maintenance projects. Changes are being made in the way the Department accomplishes work, which will likely result in more external plan preparation through the consulting community. Plans are still prepared in-house, but the increased volume of external plans produces additional challenges not faced in the past.

Railroad projects are a new venture for NCDOT. Any earthwork projects will follow the plan approval delegation similar to any roadway project.

The NCDOT has reached its highest number certifications (I, II, IIIA/B) for E&SC. The contracting industry has helped to make this program a success, through their support. The workers are gaining an understanding of site management, which was not seen during past years.

NCDOT recently had a conference with contractors explaining the new requirements of the new NPDES Stormwater General Permit NCG010000. This information will be incorporated into the certification program to ensure understanding of the new requirements.

The Department continues to evaluate products and techniques that will help stabilize erodible slopes. Efforts are being made to find a product that is good for the construction projects, which will also be profitable for the contracting industry.

Calibration meetings with regulatory agencies are critical to find compromises to conflicting regulations. NCDOT staff is holding monthly meetings on environmentally sensitive projects with agencies to discuss the next stages of construction.

Mr. Greene discussed the new challenges ahead for NCDOT with railroad projects. The expanded bridge program will take place over the next 3 years to replace and preserve structures. DOT is ready to meet the potential challenges along with the consultants and contract industry.

Mr. Veltri asked about the length of review time for DOT in-house projects, and the percentage of projects proposed for consulting firms. Mr. Harris indicated all TIP (bid-build) construction is done in-house. Design-build construction is less than 10% of the overall program. Review time for traditional projects is 10 days.

Mr. West asked whether there are penalties for contractors when NOVs are issued on sites. Mr. Harris indicated the DOT has the ability to shut down a project when problems are encountered. A contractor that is idle for 15-30 days has a sizable impact on their operations. There is contract language that indicates the contractor must pay fines incurred on projects, but this has not been an issue for DOT. Mr. Nevils indicated that Notices of Violation (NOVs) have been issued to NCDOT, but sites have achieved compliance prior to deadlines.

Dr. McLaughlin asked whether DOT has the authority to revoke certifications issued to staff involved with problems on sites. Mr. Harris indicated that it may be revoked for one year. Dr. McLaughlin asked if there is a specification for a skimmer to dewater within 24-48 hours. Mr. Harris indicated that there is an established specification for the first skimmer placed on the market. A second entity has emerged with a similar skimmer, but dewater too quickly when placed in smaller basins. Performance of the product will dictate its use, which has not resulted in consistent dewatering times in the field.

Ms. Deck asked what protocol is in place for out-of-state contractors to ensure understanding of the state sediment laws. Mr. Greene indicated requirements are outlined in the contract. Details of the project are also discussed during a pre-construction meeting. Mr. Harris indicated certified people are required on all DOT projects, to ensure understanding of the law and its requirements.

Mr. Weintraub asked the percentage of certified people with no affiliation to DOT projects. Ms. McCaleb indicated the majority of attendees are Division employees or contractors getting established with DOT projects. There are very few participants in the workshops without DOT affiliation.

Staff recommended continued delegation of the program. Mr. Weintaub made a motion to continue delegation of the program, which was seconded by Mr. Veltri and carried unanimously.

Local Program Reviews -- Mr. Gray Hauser, Mr. Mell Nevils

Mr. Hauser and Mr. Nevils reported on the reviews of Mecklenburg County, the City of Jacksonville, and Pitt County. A copy of the Local Program Report to the SCC is attached to the original minutes.

Mecklenburg County -- Gray Hauser

The Mecklenburg County local program was reviewed November 2, 2011. Seven County personnel contribute 3.5 full-time equivalents. The County has 136 approved projects, 68 of which are active. There were 14 NOVs and 2 civil penalties issued

during last fiscal year. Five projects were reviewed. All the approved plans were adequate. Two of the projects had some violations. Inspection reports are being entered into a new database system that generates very nice printed inspection reports. Staff recommends continued delegation.

Mr. West made a motion to continue delegation of the program, which was seconded by Dr. Voiland and carried unanimously.

Mr. Weintraub asked whether the new inspection report could be shared with other delegated programs. Mr. Hauser indicated other programs have developed their own reports. The system is new for the program and generation of the updated report was successful.

City of Jacksonville -- Mr. Mell Nevils

The City of Jacksonville local program was reviewed October 25, 2011. This was a follow-up to the July review. Three projects were evaluated. Two of the projects reviewed had been evaluated in the July 2011 review.

A revised sedimentation and erosion control plan for one of the projects had been submitted and was adequate. The plan included adequate calculations. Notices of Continuing Violations signed by the City Manager had been sent on two of the projects. A letter from the City Manager stopping inspections had been sent on the third site.

The three projects were inspected in the field. Two of the three projects reviewed were out of compliance. Building inspections had been suspended on both of the projects that were out of compliance.

The City is taking enforcement actions to achieve compliance. Continued delegation was approved during the August 18, 2011 Commission meeting.

Pitt County -- Mr. Mell Nevils

The Pitt County Local Program was reviewed November 14, 2011. Three persons contribute two Full Time Equivalents to erosion and sedimentation control. The City has 5 active projects. During the past year, the staff approved 8 new projects, conducted 571 inspections and issued 2 NOVs. No civil penalties were assessed and no stop work orders were issued.

Five projects were evaluated in the office, all of which had problems noted during the field inspection. Steps had been taken by the local program to handle the issues seen on the project sites. The program followed up with an email to Staff documenting steps taken to handle issues noted on the inspection report, during the program review. Mr. Nevils indicated the email could be provided to the Commission for review. A couple of sites were issued NOVs. Steps were taken on the other sites to bring them into compliance, and no further action was needed. Staff recommends continued

delegation.

Mr. Weintraub asked what the staff members are able to do, considering the limited number of active projects. Mr. Nevils indicated the staff are filling other roles within the County, and are not limited to erosion control. They are able to inspect sites every two weeks. The plan reviewer, County Engineer, is currently a part-time employee.

Ms. Deck asked whether the compliance issues were due to recent problems on the site, possibly due to rainfall. Mr. Nevils indicated there were groundcover issues, in which 21 calendar days had not elapsed since last inspection. The issues have since been repaired, or NOVs issued including deadlines for compliance.

Mr. Glass made a motion to continue delegation of the program, which was seconded by Ms. Deck and carried unanimously.

Informational Items:

City of Monroe -- Gray Hauser

The Mooresville Regional Office conducted an informal review on September 15, 2011. The plans were adequate and are reviewed in a timely manner. Inspections are performed on a routine basis. All reports are accurate and reflect the site conditions. The City does a very good job in monitoring sites, and enforcing the local ordinance.

Dr. Voiland asked what actions prompt an informal review. Mr. Hauser indicated the regional offices aim to conduct at least one informal contact per year with their local programs. These reviews are conducted between visits by the Central Office staff.

Regional meetings -- Gray Hauser

Seven regional meetings were conducted around the state with the local programs and LQ office to review the new NPDES Stormwater General Permit NCG010000. Policies and procedures for reviewing erosion control plans were discussed to ensure compliance with the stormwater permit. Guidance was also provided for plans that did not satisfy requirements, by detailing revisions necessary to obtain coverage.

Adoption of 15A NCAC 04B.0232 Design Standards for the Upper Neuse River Basin (Falls Lake Watershed) -- Mr. Gray Hauser

The Falls Lake rule was published September 15, 2011 in the NC Public Register. People were given 60 days to comment on the rule, and a Public Hearing was held on October 11, 2011. There have been no comments received, verbally or in writing, on the rule. Staff recommends adoption of the rule.

Mr. Veltri made a motion to adopt the Upper Neuse River Basin Rule, which was seconded by Ms. Deck and carried unanimously.

Contract Proposal to Survey Workshop Participants -- Mr. Mell Nevils

Mr. Nevils discussed a contract to conduct survey research on the needs of design workshop participants. The Commission sponsors yearly workshops, which is a major focus of the education program. Workshop attendance has significantly dropped in recent years. Other entities have started conducting workshops which has resulted in a duplicate effort. The Education Committee has discussed other efforts for funding to be able to get information distributed. The Committee proposed a project to determine better ways to educate on erosion control. The project is a joint effort between the SCC, Water Resources Research Institute (WRRRI), and the NCSU Soil Science Department.

Mr. Weintraub asked whether the other funding participation is included in the \$6000 proposal. Mr. Nevils indicated it is in addition to the proposal amount.

Mr. West asked whether the participants are contributing equally. Mr. Nevils indicated that the SCC is the major contributor, but will gain the most benefit from the project.

Mr. Nevils asked if any remaining education funds could be used for purpose of operating the Land Quality Section.

Mr. Glass made a motion for the approval of the contract for survey research and to use remaining funds for operations, which was seconded by Mr. West and carried unanimously.

Mr. Glass questioned the extent of the email list which will be used for the survey research. Ms. Wilkinson indicated lists gathered from each of the training providers (WRRRI, Soil Science Dept, Bio & Ag Engineering, NCDOT, and NC Board of Examiners) will be utilized for the project.

Schedule for SCC Meetings in 2012 -- Mr. Gray Hauser

Mr. Hauser presented the following proposed dates for the 2012 Sedimentation Control Commission meetings:

February 28, 2012

May 24, 2012

August 23, 2012

November 14, 2012

Mr. West made a motion to accept the SCC meeting dates in 2012, which was seconded by Ms. Deck and carried unanimously.

Appointment of Chair for the Technical Advisory Committee -- Ms. Robin Smith

Ms. Smith appointed Dr. Rich McLaughlin to replace Dr. Jennings as the Chair for the Technical Advisory Committee.

INFORMATION ITEMS:

2011 Report to the Environmental Review Commission -- Mr. Hauser presented the annual report submitted to the Environmental Review Commission. A copy of this report is attached to the original minutes.

Update on new and amended N.C. General Statutes -- Mr. Allen provided an update on the new and amended N.C. General Statutes.

Senate Bill 781 mandates any rule with substantial economic impact, having impact of any aggregate greater than \$500,000, requires a fiscal note. The Falls Lake Rule did not have a substantial economic impact.

Considering Senate Bill 781, delegated programs will no longer have final authority on civil penalties issued. The Administrative Law Judge (ALJ) would have the authority to amend penalties issued by delegated programs. There has been discussion on whether SB 781 changes the final decision making authority under the SPCA. Since the General Statutes are ambiguous, litigation or additional legislation may be necessary to resolve the ambiguity.

Enforcement Report -- Mr. Payne 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. Hauser presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

NCDOT Report -- Mr. Hauser presented a report on Immediate Corrective Actions issued by NCDOT and NCDOT Maintenance Trout Buffer Waivers.

Education Program Status Report -- Ms. 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. Nevils provided a report on the LQS current plan approval, inspection, and enforcement activities statewide. A copy of this report is attached to the original minutes.

Land Quality Section Report -- Mr. Nevils provided a report on the current number of vacancies in the Section and other LQS activities and issues. A copy of this report is attached to the original minutes.

CONCLUSION

Remarks by the Director -- none

Remarks by the Commission Members -- Dr. Voiland announced he will be retiring in December 2012 and will attend all 2012 Sediment Commission Meetings.

Remarks by the Chair -- Ms. Smith thanked DOT and staff for the additional work on the new stormwater rules. She welcomed Jonathan Bivens to the Commission. She also stated that Mr. Tommy Esqueda resigned.

Adjournment -- As there was no further business, Ms. Smith adjourned the meeting.


Stephanie Lane, Recording Secretary


James D. Simons, Director