

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
February 28, 2012
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 28, 2012 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
Dr. Michael Voiland, Vice Chair
Mr. Manly West
Ms. Heather Deck
Mr. Kevin Martin
Mr. Randy Veltri
Mr. Rob Weintraub

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
Mr. Matt Poling, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Mr. Rufus Allen, Assistant Attorney General
Mr. John Payne, Assistant Attorney General
Mr. David Harris, NC Department of Transportation
Dr. Jean Spooner, NCSU

PRELIMINARY MATTERS

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

Those in attendance introduced themselves.

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

ACTION ITEMS

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

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

Orange County -- Mr. Mell Nevils

The Orange County Local Program was reviewed on January 20, 2012. Three persons contribute three Full Time Equivalents to erosion and sedimentation control. The County has 8 active projects. During the past year, the staff approved 30 new projects, conducted 552 inspections and issued two Notices of Violation (NOV). No civil penalties were assessed and 3 stop work orders were issued. Projects are inspected at least once per month. A pre-construction conference is held for every new project. A copy of this report is attached to the original minutes.

Five projects were evaluated in the office. All of the files were in order. The erosion control and sedimentation control plan for four of the projects reviewed were adequate. The five projects were inspected in the field. Four of the projects reviewed were in compliance and one project (Hillsborough Medical Center) was out of compliance. One inspector is dedicated to erosion control only. A second inspector divides time between erosion control and stormwater, and was encouraged by staff to get additional training.

Staff recommended continued delegation of the program.

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

City of Greenville -- Mr. Mell Nevils

The City of Greenville Local Program was reviewed on February 9, 2012. One person contributes one Full Time Equivalent to erosion and sedimentation control. The City has 8 active projects. During the past year, the staff approved 20 new projects, conducted 60 inspections and issued no notices of violation. No civil penalties were assessed and no stop work orders were issued. A copy of the report is attached to the original minutes.

Five projects were evaluated in the office. All of the files were complete and included FROs, Approval Letters and inspection reports. All plans are submitted to the Soil and Water Conservation District for review and comments. Building Permits and other permits are held up until a plan is approved. Letters are sent to the Building Permit Office to report approved plans and are included in the files. There were issues with some of the plans, and these problems were discussed. Staff talked with the City about performing better technical reviews. The five projects were inspected in the field. Four

of the five projects were out of compliance.

Mr. Nevils presented an email from the City to the Commission, which detailed actions taken for each of the five projects reviewed. A copy of this report is attached to the original minutes.

Staff recommended to review the program again in 3-6 months and report back to the Commission in May or August.

Ms. Smith asked why a NOV/civil penalty was not issued for a site with offsite sedimentation for a continued period of time, and whether the sites were being inspected. Mr. Nevils indicated the sites had been inspected and were called out of compliance.

Mr. Bivens expressed concern with inadequate plans and asked who conducts reviews. Mr. Nevils indicated the City Engineer conducts the reviews.

Ms. Deck indicated there has been a culture of no support for enforcement action by the City. She asked how the City plans to address the plan review inadequacies or if staff offered any suggestions for training. Mr. Nevils suggested to the City to coordinate with the Washington Regional Office for assistance conducting reviews.

Mr. Glass asked whether the City had been notified in writing of the concerns and expectations of the program. Mr. Nevils has not written a letter to the City, but did discuss expectations of the program on the day of the review.

Ms. Deck made a motion to put the City of Greenville on probation and require follow-up documentation of proposed changes to the program.

Mr. Bivens asked whether a vote must be taken on the delegation today. Mr. Nevils indicated that the delegation continues until it is revoked by the Commission.

Mr. Martin seconded the motion, made by Ms. Deck, to put the City of Greenville on probation.

Mr. Weintraub asked what steps are involved in placing the program on probation. Ms. Smith indicated a letter would be sent to the program by Staff outlining the concerns presented during the Commission meeting.

Mr. West expressed concern for the Commission to take an action on the delegation, without previously submitting a formal letter outlining corrective actions needed. Mr. Glass also expressed hesitation about probation for the program. He supported sending a letter with a 3 month deadline summarizing specific corrective actions, and the delegation discussion could continue at the May Commission meeting.

Ms. Smith asked for a vote on the motion to place the City of Greenville on probation. The final vote was 6 in favor and 2 opposed (Glass, West). The motion carried by majority.

City of Charlotte -- Mr. Gray Hauser

On February 9, 2012 personnel from NCDENR, Land Quality Section, conducted a review of the City of Charlotte Local Program. Staff has been reduced to 3.5 FTEs. During 2011, the City had conducted 748 total plan reviews. The city has also conducted 2,684 inspections during this time frame. The total disturbed area was 860 acres. In this same time frame 17 NOVs and 15 civil penalties have been issued. Four projects were reviewed in the office and inspected in the field. Three of the sites were in violation. A copy of this report is attached to the original minutes.

Additional information concerning the Charlotte program was provided by Mr. Nevils. He discussed issues with the Commission on Browns Cove (off Lake Wylie), which has been affected by multiple construction projects. The watershed for the cove is under the jurisdiction of both the City of Charlotte and Land Quality. The City of Charlotte has taken over most of Mecklenburg County. Most of the development in the area has been toward Lake Wylie and Lake Norman. The area surrounding Browns Cove, prior to the late 1990s, was mostly pristine land without development. Since that time development has increased. A large subdivision was developed near the cove and drains toward the Cove. Local homeowners petitioned the City to prevent building the subdivision. The development proceeded and the City promised local homeowners to prevent siltation in the Cove. The City also ensured remediation would take place if needed. The City has never done any enforcement within the watershed. Studies have been conducted to evaluate the sediment in the Cove, most recently in 2011. Sediment has been removed at various times over the years. Staff recently met with a local homeowner complaining of sedimentation issues in the area. The City tried to get developers to move forward with cleaning out the Cove, but the efforts failed. Land Quality is working to coordinate a meeting of all parties within the watershed that may have contributed to the sediment in the Cove. The City does not feel they have authority to enforce on this matter.

Another large subdivision is proposed for the area, and issues were found with the plans. Mr. Nevils indicated that some action from the Commission may be needed, if the City is not willing to cooperate on this project.

Mr. Hauser indicated a letter has been sent to The City of Charlotte detailing the following recommendations to improve the program:

- 1) Any site that is considered to be out of compliance should get written documentation of all of the corrective actions that need to be performed on site. A "Fail Without Notice" should not be an option on the inspection reports.
- 2) Language of whether or not the new NPDES permit requirements are being met should be included in either the letter of approval or their grading permit.

- 3) In the field, a focus should be placed on stabilizing sediment basin slopes and their associated diversions to prevent erosion from occurring from within their measures.

Staff recommends continued delegation of the program, contingent upon the City agreeing to the outlined recommendations.

Mr. Martin made a motion to continue delegation, contingent upon staff recommendations. Dr. Voiland seconded the motion.

Mr. Glass expressed concerns to the Commission on consistency with evaluation of local programs. Guidelines need to be established to ensure consistency with reviews. Ms. Smith asked Staff to develop a document with guidelines to present to the Commission.

Ms. Smith called for a vote on the motion to continue delegation of the program. The motion carried unanimously.

INFORMATION ITEMS:

Report on Local Program Assistance by Regional Offices -- Mr. Gray Hauser

Report on Regional Office Contacts with Gaston, Catawba and Lincoln Counties, the City of Burlington and Winston-Salem/Forsyth County. A copy of this report is attached to the original minutes.

Catawba County

Charlie Whaley and Ryan Kormanik from the Mooresville Regional Office inspected three sites with the Catawba County Erosion Control Program on November 4, 2011. One site had a significant violation, including clearing and grubbing of stream banks. Subsequent to the inspection, DWQ inspected the site and issued a NOV. The Regional Office recommended a complete review of the program, which has been scheduled by Staff during March.

Lincoln County

Charlie Whaley and Ryan Kormanik from the Mooresville Regional Office inspected three sites with the Lincoln County Erosion Control Program on November 21, 2011. One site had significant design and compliance issues. DWQ had issued a NOV, and the County a Notice of Non-Compliance. The Regional Office recommended a complete review of the program, which has been scheduled by Staff during March.

Gaston County

Charlie Whaley and Ryan Kormanik from the Mooresville Regional Office inspected four sites with the Gaston County Erosion Control Program on December 12, 2011. The Regional Office commended the quality of the program.

City of Burlington

Tim Latham of the Winston-Salem Regional Office inspected five sites with the City of Burlington Erosion Control Program on December 11, 2011. Three of the sites were compliant, and one lacked ground cover. The fifth site had sedimentation damage, and was already under a NOV. Sites were being inspected on a regular basis, and violations were properly documented.

Winston-Salem/Forsyth County

Tim Latham of the Winston-Salem Regional Office inspected five sites with the Winston-Salem/Forsyth County Erosion Control Program on December 11, 2011. Four were compliant and the fifth needed minor maintenance. Mr. Latham commented that the program is doing an outstanding job and takes a lot of pride in the program.

Mr. Martin commented that Catawba County was asked to appear before the Environmental Review Commission in recent years. The program was not enforcing the Water Supply Watershed nor Catawba Buffer Rules properly. The program was approving plans that were in violation of those rules. He encouraged Mr. Hauser to contact DWQ to coordinate a joint review.

Falls Lake Rule -- Mr. Gray Hauser

Mr. Hauser reported on 15A NCAC 04B.0132 that was approved by the Rules Review Commission, with an effective date of February 1, 2012. A copy of the rule is attached to the original minutes.

Memorandum of Understanding between Division of Land Resources and North Carolina Forest Service -- Mr. Gray Hauser

The new MOU signed January 27, 2012 was presented. A copy of the MOU is attached to the original minutes.

The document was intended to clarify things that have been done in policy memoranda between the two agencies through the years. Timelines for compliance have been outlined to reinforce actions taken by staff. The document emphasizes that Land Quality is the lead agency in determining whether a site is forestry activity or land development. It also affirms that the Forest Service is the lead agency in determining

compliance with Forestry Practice Guidelines.

Ms. Smith expressed appreciation to have a document in place for clarification of issues. She asked whether training is being arranged for the Forest Service staff. Mr. Nevils indicated arrangements will be made for the spring.

Mr. Weintraub asked for clarification of "permanent compliance with the SPCA," shown under *Mutual Understandings (VII)*. Mr. Hauser indicated that meant the site is stabilized with permanent ground cover.

Ms. Smith asked when the Forest Service is made aware of forestry related activities. Mr. Hauser indicated a NCFS representative should come to the Commission to address that issue. There are consultants that develop forestry management plans, and the county rangers are also made aware of projects. There is not a requirement in place for notification, and it is voluntary.

Mr. Weintraub asked whether a similar agreement is in place between DWQ and NCFS. Mr. Nevils indicated that he is not aware of such an agreement.

Memorandum of Understanding between Division of Land Resources and Division of Water Quality -- Mr. Mell Nevils

The MOU signed December 15, 2011 was presented. A copy of the MOU is attached to the original minutes.

A MOU has been in place with DWQ since 2002, but the recent changes to the Construction Stormwater Permit required some updates to the existing document.

Ms. Deck asked about the process taken when a plan is not covered under the NPDES Construction Stormwater Permit. Mr. Nevils indicated Land Quality reviews the erosion control plan to determine whether requirements of the Sediment Act and Stormwater Permit are satisfied. The new Stormwater ground cover requirements and surface dewatering must be satisfied. Plans that do not satisfy the Stormwater requirements are required to apply for an individual NPDES Permit. The process for obtaining an individual permit is long, and most people choose to revise the erosion control plan to satisfy the new requirements.

Mr. Weintraub asked whether any project can be exempt from the Stormwater Permit. Mr. Nevils indicated that sites requiring a sediment and erosion control plan must have a Stormwater Permit. There is a one acre threshold for both permits.

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.

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 LQS's current plan approval, inspection, and enforcement activities statewide.

Land Quality Section Report -- Mr. Nevils provided a report on the current number of vacancies in the Section and other LQS activities and issues.

CONCLUSION

Remarks by the Director -- Mr. Simons thanked the staff. He mentioned the passing of Ms. Cathy Hardy, Budget Planning Director. Manly Wilder, Deputy Secretary, will be retiring as of May 1, 2012, and will be replaced by Mary Penny Thompson.

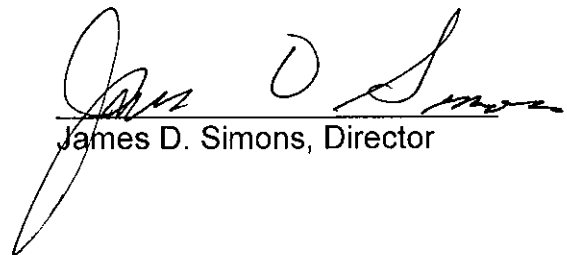
The expansion budget was submitted to raise permit fees for sedimentation.

Remarks by the Commission Members -- None

Remarks by the Chair -- Ms. Smith thanked the staff for their hard work.

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


Stephanie Lane, Recording Secretary


James D. Simons, Director