

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
November 30, 2010
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 30, 2010 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 Smith, Chairperson
Mr. Joe Glass
Dr. Bill Miller
Mr. Robert Weintraub
Mr. Tommy Esqueda
Dr. Michael Voiland
Ms. Elaine Chiosso
Mr. Manly West
Dr. Rich McLaughlin
Mr. Kevin Martin
Mr. Randy Veltri

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. Gowon Goode, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Ms. Gail Bledsoe, NC Div. of Forest Resources
Ms. Melanie McCaleb, NCSU
Mr. Rufus Allen, AG's Office
Mr. John Payne, AG's Office
Mr. Ted Sherrod, NC Department of Transportation
Mr. David Harris, NC Department of Transportation
Mr. Don Lee, NC Department of Transportation
Mr. Ricky Greene, NC Department of Transportation
Mr. Kirk Stafford, Town of Cary
Ms. Amy Simes, NC Department of Environment and Natural Resources
Mr. Chris Roberts, Durham City/County

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 for the August 19, 2010 meeting. Mr. Robert Weintraub noted a typographical error that stated that Chairman Brewer adjourned the meeting. The motion to approve the minutes with the correction of the adjournment, changing Chairman Brewer to Chairperson Smith, was made by Mr. Joe Glass. Ms. Elaine Chiosso seconded the motion, and it carried unanimously.

Reading of New Member's Economic Interest Statement into Record

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Mr. Manly West from the State Ethics Commission. There was a potential for a conflict of interest. Mr. West will fill the role of the Soil & Water Conservation representative. His employer is Albemarle Soil & Water District, regulated by 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.

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Mr. Kevin Martin from the State Ethics Commission. There was a potential for a conflict of interest. Mr. Martin will fill the role of Environmental Management Commission member. He is an environmental consultant whose clients seek permits from the Sedimentation Control Commission. He was informed to exercise appropriate caution in the performance of public duties should issues involving his clients come before the Commission. This would include recusing himself to the extent that his interests would influence his actions.

Mr. Hauser read the Evaluation of the Statement of Economic Interest filed by Mr. Randy Veltri from the State Ethics Commission. There was a potential for a conflict of interest. Mr. Veltri will fill the role of public utility representative. He is employed by Duke Energy Carolinas, regulated by the Sedimentation Control 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

Mr. Hauser summarized the review of 16 NCDOT projects (8 Western NC / 8 Eastern NC). The review focused heavily on contract construction projects across the state. Three projects had been issued an ICA (Immediate Corrective Action) from the NCDOT

Roadside Environmental Unit in the past. The sites were evaluated the adequacy of plans, effective measures and ground cover. Two maintenance projects, visited by Mr. Gowon Goode, noted some failed measures. Additional measures had been added to correct problems.

Mr. Hauser discussed the NCDOT training program for maintenance forces for the preparation of slopes. Equipment has been evaluated to aid in slope compaction.

A meeting was held to improve the quality of applications for trout buffer waiver requests on secondary roads. Division Environmental Officers in Divisions 11 & 13 were resistant to providing additional information.

Ms. Chiosso raised a question regarding the status of the Western Wake Expressway. Mr. Hauser indicated that is a Turnpike Project that was part of the 2009 Annual NCDOT review, but did not have current updates on the project status. Ms. Chiosso requested an update from Mr. Ted Sherrod (NCDOT) on the project.

Chairman Smith asked for elaboration on the issues surrounding Division Environmental Officers from Divisions 11 and 13 objecting to cutting of trees as land disturbing activity. Mr. Hauser noted that existing case law regards tree removal as a precursor to development as part of the land-disturbing activity. Science supports the idea that removal of tree cover increases erosion. Mr. Hauser indicated that a trout waiver must be issued before trees are removed from the buffer zone. Mr. Nevils explained that it should be understood by the Environmental Officers that it is required; otherwise there could be Notices of Violation. There is a communication issue that must be resolved.

NCDOT Report - Mr. Don Lee

A copy of NCDOT Report is attached to the original minutes.

Mr. Lee discussed the increased awareness in erosion control through the years at NCDOT. NCDOT is obligated by the Commission to review 25% of its plans. Currently, the Department reviews 98% on contract plans and 78% of maintenance plans. Disturbed area on Contract Construction has increased, due to Stimulus Funding. Maintenance projects have decreased, due to budget issues.

The Department performed around 2500 inspections on Contract Construction, with 18 ICAs issued. (Figures for the Maintenance Projects were outlined in the NCDOT Executive Summary.) There were no NOV's issued by Land Quality.

The ICA process is similar to the NOV. It forces accountability and performance, which may lead to internal ramifications.

Don announced Mr. Ted Sherrod's retirement and acknowledged his contributions in the field of erosion and control.

Response to Western Wake Expressway - Mr. Ted Sherrod

Mr. Sherrod indicated John Holley and the Raleigh Regional Office have worked closely with NCDOT during heavy grading operations. Efforts were taken to establish groundcover and maintain sediment control measures on site. One ICA was issued on the project. There was a \$50,000 disincentive when the project received an ICA from NCDOT. The contractor met with NCDOT staff to address action plan to correct issues, which were ground cover related. Progress has been made since that time with staged stabilization and protection of streams/jurisdictional areas in that corridor.

Continuation of NCDOT Report - Mr. Don Lee

The NC DOT Sedimentation and Erosion Control/Stormwater Certification program has various levels, and is managed with help from NC State. The contracting industry takes advantage of this program to get employees certified. The program is currently in the re-certification period, and is being streamlined in order to lower the cost and time spent away from work for those attending. This program has been a significant benefit to equipment operators to see the right way (to install).

Quarterly training sessions have been adjusted to address recommendations from the 2009 Land Quality report concerning secondary roads. Curriculum of the re-certification program has been adjusted.

Mr. Lee discussed the issue involving the Division Environmental Officers. He is working through internal channels to ensure that the opinion, tree cutting is not land disturbance, is corrected. Mr. Lee volunteered to present curriculum regarding trout buffers at a future Commission meeting. Chairman Smith agreed to that. Maintenance in borrow pits was reported as a problem in the 2009 report. Efforts were made to inspect 210 maintenance borrow and waste sites for stabilization. All sites were satisfactory or action items were completed to ensure compliance.

Research has been conducted to address critically eroding areas with the use of compost seeding. It has been used in limited locations with success. NCDOT has lobbied the Federal Highway Administration to use funding for this treatment on distressed areas along the right-of-way.

Dr. McLaughlin asked about the cost per acre for the compost. Mr. Lee indicated a cost of \$4800-5200 per acre. A comparison of this method to conventional seeding operations (tillage, equipment, mobilization) still proves beneficial.

Dr. McLaughlin commended NCDOT on the efforts made on the 540 project to prevent erosion and sedimentation.

Staff recommended continuation delegation of the program. The motion was made to continue delegation by Dr. Miller. Dr. Voiland seconded the motion, and it carried unanimously.

Amendment to Gaston County - Mr. Gray Hauser

Mr. Hauser discussed changes in the Gaston County ordinance. The revision included the addition of members to the Environmental Review Board as follows: one member of the Gaston County Homebuilders Association and two other developers nominated by the Gaston County Home Builders Association for a total of three individuals.

Staff recommended approving the request from Gaston County.

Mr. Martin made the motion to approve the request for Gaston County to change their ordinance. Mr. West seconded the motion.

Dr. McLaughlin raised a question regarding a conflict in the ordinance language concerning the timeframe for slope stabilization. Mr. Hauser noted the concern and will verify that the longer timeframe specified applies only to permanent groundcover.

Ms. Chiosso expressed concern about the new (Environmental Review) board. A request was made that staff follow-up after one year, to ensure the ordinance is being carried out as intended. Mr. Hauser indicated a report will be requested from the Gaston County staff.

After considerable discussion, Mr. Martin revised his motion to approve only the one change (additional members) to the County ordinance. Mr. West seconded the motion, and it carried unanimously.

Local Program Reviews - Mr. Gray Hauser and Mr. Gowon Goode

Mr. Hauser reported on the reviews of Jackson County, Macon County, and the Town of Highlands. A copy of the Local Program Report to the SCC is attached to the original minutes.

Jackson County

The Jackson County Local Program was reviewed September 21, 2010. The five projects evaluated all had some violations. The County is not taking effective enforcement action against sites with significant violations, specifically groundcover.

Staff recommended continuing the review to the February 2011 SCC meeting. Ms. Chiosso made a motion to continue the review of Jackson County, which was seconded by Dr. Voiland and carried unanimously.

Macon County

The Macon County Local Program was reviewed September 22, 2010. Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation, which was seconded by Mr. Glass and it carried unanimously.

Town of Highlands

The Town of Highlands Local Program was reviewed September 23, 2010. Staff recommended continued delegation of the program. Dr. Miller made a motion to continue delegation, which was seconded by Mr. Glass and carried unanimously.

Local Program Reviews (contd.) - Mr. Gowon Goode

Mr. Goode reported on the review of 14 Local Programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Town of Boone

The Town of Boone Local Program was reviewed August 17, 2010. Staff recommended continued delegation of the program. Mr. West made a motion to continue delegation, which was seconded by Mr. Martin and carried unanimously.

Watauga County

The Watauga County Local Program was reviewed August 26, 2010. Three projects were evaluated in the office and field. The erosion control plans were adequate. There was no systematic order to the files. Files did not contain necessary documentation. There was no history of inspections. Two of the three projects were out of compliance. The Winston-Salem Regional Office conducted a follow-up inspection of the program on October 5, 2010. The Local Program was not able to clearly provide the number of active projects, plan reviews, and number of inspections conducted.

Staff recommended that the review of this program should be continued until May 2011, while the Winston-Salem Regional Office staff work with the Local Program. Mr. Martin made a motion requesting an update in February 2011 and review of the program in May 2011. The motion was seconded by Ms. Chiosso and carried unanimously.

Buncombe County

The Buncombe County Local Program was reviewed August 24, 2010. Staff recommended continued delegation of the program. Mr. Veltri made a motion to continue delegation, which was seconded by Dr. Voiland and carried unanimously.

City of Asheville

The City of Asheville Local Program was reviewed August 31, 2010. Staff recommended continued delegation of the program. Mr. West made a motion to continue delegation, which was seconded by Mr. Veltri and carried unanimously.

Town of Beech Mountain

The Town of Beech Mountain Local Program was reviewed October 19, 2010. . There are no active projects. The Town Manager requested that the State provide information and guidance so that the Local Program can be strengthened to administer its Local Ordinance. The Winston-Salem Regional Office will contact the Town to provide guidance to strengthen the delegated program.

Staff recommended continued delegation of the program. Mr. Weintraub questioned continued delegation for inactive programs. The Commission suggested monitoring the Local Program staff, providing training, and prioritization for review due to activity. Mr. Nevils suggested an option that plan reviews be conducted by Land Quality staff. After considerable discussion, Ms. Chiosso made a motion for continued delegation of the program. Dr. Miller seconded the motion and it carried by majority (7 for and 3 opposed). Staff was directed by the Commission to request notification of plans received by the Town, to determine scheduling a Local Program review. It was suggested to develop a Memorandum of Understanding to ensure the Local Program contacts Land Quality staff regarding program activity.

Durham City/County

The Durham City/County Local Program was reviewed November 10, 2010. During the review, inconsistency was observed between the documentation and site conditions. The sites had deficiencies not noted in recent inspections.

Staff recommended continued delegation of the Local Program under the condition that the Local Program evaluates the integrity and consistency of inspection reports while working with the Raleigh Regional Office staff on conducting inspections and documenting inspection reports to achieve an acceptable level of consistency.

Chris Roberts, Durham City/County representative, addressed the Commission. He notified the Commission that the three projects evaluated during the review have achieved compliance. Steps have been taken in issuing Notices of Violation to those sites, and an assessment of a Civil Penalty is pending. A request by the Local Program has been made to the Raleigh Regional office for assistance in future inspections. Some disciplinary actions have been taken internally to correct inconsistencies.

Mr. Glass made a motion to continue delegation of the program and attend training with the Raleigh Regional office. Dr. Miller seconded the motion and carried unanimously.

Grandfather Village

The Grandfather Village Local Program was reviewed October 19, 2010. There were no active projects. The Local Program has had only one project since delegation, and it was eventually taken over by the State. Staff recommended continued delegation. Dr. Voiland made a motion to continue delegation, which was seconded by Mr. West and carried by majority (8 for and 2 opposed).

Chairman Smith noted Grandfather Village will be under same caveat as Beech Mountain, suggesting partial delegation.

Haywood County

The Haywood County Local Program was reviewed October 20, 2010. Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation, which was seconded by Mr. Martin and carried unanimously.

Town of Lake Lure

The Town of Lake Lure Local Program was reviewed October 25, 2010. Staff recommended continued delegation of the program. Dr. Miller made a motion to continue delegation, which was seconded by Mr. Veltri and carried unanimously.

Town of Columbus

The Town of Columbus Local Program was reviewed October 27, 2010. There was one active project, forwarded from Land Quality Asheville Regional Office. Staff requested more training on conducting formal inspections and plan review from the Asheville Regional Office. The Asheville Regional Office will be in contact to conduct those trainings. Staff recommended continued delegation of the program. Mr. West made a motion to continue delegation, which was seconded by Ms. Chiosso and carried unanimously.

Henderson County

The Henderson County Local Program was reviewed October 20, 2010. Staff recommended continued delegation of the program. Dr. Voiland made a motion to continue delegation, which was seconded by Mr. Veltri and carried unanimously.

Resolution to Amend SPCA to Increase Plan Review Fee – Mr. Mell Nevils

Mr. Nevils presented a resolution to support amending the Sedimentation Pollution Control Act to increase the sediment fees to \$170. This figure is the median value for sediment fees collected by all the Local Programs. After considerable discussion regarding the wording of several changes, Mr. Esqueda made a motion to accept the "Resolution Regarding Increasing The Fee For The Review of Erosion and Sedimentation Control Plans" with the changes discussed, and authorized Chairperson Smith to sign once the corrections were made to the resolution. Mr. West seconded the motion and it carried by majority (9 for and 1 opposed).

Schedule for SCC Meeting in 2011 – Mr. Gray Hauser

Mr. Hauser presented the following proposed dates for the 2011 Sedimentation Control Commission meetings:

Thursday, February 17, 2011

Thursday, May 19, 2011

Thursday, August 18, 2011

Thursday, November 10, 2011 or Tuesday, November 29, 2011

Chairman Smith had a conflict with May 19, 2011. The date was revised to Tuesday, May 17, 2011.

Mr. Weintraub proposed Tuesday, November 29, 2011.

Mr. Weintraub made a motion to approve the revised dates for the 2011 Sedimentation Control Commission meetings. Ms. Chiosso seconded the motion, and it carried unanimously.

INFORMATION ITEMS

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.

Mr. Payne reviewed the enforcement report. He explained that the number of cases pending in OAH has increased. Many cases are lasting longer because people do not have the funds and need more time. The practice at the Attorney General's Office is to continue the case for individuals showing indications that they are trying to achieve compliance. Injunctions were consistent with prior reports. Cases where CPAs are being paid by installment have been successful. Total cases have increased because they are lasting longer. The number of new cases is declining. Mr. Payne then reviewed the penalties paid.

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

Land Quality Plan to Implement Conservation Council of North Carolina (CCNC) Recommendations-- Mr. Nevils presented the plan to improve local program oversight. A copy attached to the original minutes.

Continued efforts will be made to continue establishing Local Programs. Staff proposes working with the Attorney General's Office to develop a Memorandum of Understanding outlining SCC expectations of the Local Programs. This signed document would be part of a delegation acknowledging expectations. A procedure is being drafted for delegation of new programs, which will be posted on the Land Quality website.

Mr. Nevils indicated several recommendations require the attention of the SCC. Chairman Smith proposed formation of a sub-committee to address the issues identified in the CCNC report.

Mr. Esqueda raised a question regarding the Memorandum of Understanding (MOU), suggested for the Local Programs. Mr. Nevils explained that the MOU is a general statement outlining the Commission expectations required of the Local Program. The MOU would address management and execution of an erosion control program.

Mr. Weintaub recommended contacting the local government to see if they have any projects before scheduling a review.

Mr. Martin questioned whether he could continue to serve on the TAC, since elected to the SCC. After considerable discussion, Mr. Martin was informed that there would be no legal issue with serving on the TAC and also voting as a SCC member. Mr. Martin suggested deferring the matter to the Ethics Commission.

2010 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.

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.

Update on the SCC Rules and Regulations-- Mr. Mell Nevils provided an update to the new SCC members of recent updates in regulation.

The Self-Inspection Rule became effective on October 1, 2010. Efforts have been made to notify the public of the new rule and its requirements.

A resolution was passed by the SCC on the qualifications for inspectors, and a report was submitted to the ERC. The resolution was not pursued during last legislative session, and no plans are in place for the current session.

The economic impact study for the Falls Lake Rule is in preparation. The progression of this rule is uncertain due to Governor Perdue issuing a stop on new rules. The Division plans to finish the rule, advertise, and intends to make it available to the SCC in February 2011.

DLR and DWQ have been working together since August 2010 on Effluent Limit Guidelines specified by the EPA. The SPCA will need to be revised to be consistent with the guidelines developed by the workgroup.

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. Mr. Nevils thanked the staff for their hard work.

CONCLUSION

Remarks by the Director -- Mr. Simons thanked Chairperson Smith for her efforts. An announcement was made that the Department Liaison resigned on October 13, 2010.

Remarks by the Commission Members -- Mr. Voiland announced Ms. Nicole Saladin has been hired to replace Kelly Porter.

Remarks by the Chairman -- Ms. Smith suggested nomination of a Vice Chair for the SCC.

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



Stephanie Lane, Recording Secretary



James D. Simons, Director