

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
February 4, 2016
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 4, 2016 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. Jonathan Bivens
Mr. Charles Hughes
Ms. Heather Jacobs Deck
Ms. Karla Hammer Knotts
Dr. Susan White (Vice-Chair)
Mr. Douglas Randolph
Mr. Kevin Martin
Ms. Natalie Berry (via teleconference)

OTHERS

Mr. Tracy Davis, Director, DEMLR (via teleconference)
Mr. Toby Vinson, Section Chief, DEMLR (via teleconference)
Mr. Brad Cole, Chief Engineer, DEMLR
Ms. Stephanie Lane, Administrative Secretary
Ms. Evangelyn Lowery-Jacobs, Sed. Education Specialist, Land Quality Section
Ms. Ashley Rodgers, State Sedimentation Specialist, Land Quality Section
Ms. Karyn Pageau, Asst. State Sedimentation Specialist, DEMLR
Mr. Bradley Bennett, Stormwater Permitting, DEMLR
Mr. James Bernier, Jr., Attorney General's Office
Mr. Kirk Stafford, Town of Cary
Mr. Steven Webb, NCHBA
Mr. Berry Jenkins, Carolina AGC
Mr. David Harris, NCDOT
Mr. Don Lee, NCDOT
Mr. Greg Perfetti, NCDOT
Ms. Holly Miller, Town of Wake Forest
Ms. Jennifer Everett, DEQ Rule Making Coordinator, General Counsel's Office

PRELIMINARY MATTERS

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

Those in attendance introduced themselves.

Ms. Smith asked for a motion to approve the minutes from the November 12, 2015 meeting.

The motion to approve the minutes was made by Mr. Bivens. Ms. Berry seconded the motion, and it was approved 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) between August 24, 2015 and November 5, 2015. A copy of the NCDOT Annual Review Report to the SCC is attached to the original minutes.

Ms. Rodgers summarized the review of 20 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 20 and 80 percent complete. Eighteen contract construction or design-build projects and two maintenance/force account projects were chosen based on the stage of construction and the significance of the projects.

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

1. Concrete Washouts – Projects that had reached a point of construction requiring a concrete washout did not have one installed. Improvement is needed for proper installation and use, which was noted throughout the annual review.
2. Timely Establishment of Groundcover – Projects need to establish groundcover (temporary or permanent) within 7 to 14 days as required by the current NPDES Construction Stormwater General Permit. It should be documented which Construction Stormwater General Permit applies to a particular project, and a copy should be kept onsite with the approved plans/documents.
3. Inadequate Inlet Protection – Wattles are not suitable for inlet protection with significant bare areas draining to the inlet.
4. Practice Good Site Management – Some sites needed better site management to decrease potential issues of erosion and sedimentation. Stockpiles adjacent to inlets should be addressed even if a downstream erosion control measure is utilized. Erosion control measures should remain in place and be maintained throughout all phases of construction. Issues were noted with premature conversion of E&SC basins to permanent stormwater ponds. However, no offsite sediment was noted on projects during the annual review.
5. Maintenance of Measures – NCDOT should reinforce maintenance of measures to staff, and utilize tools such as ICAs to gain timely compliance when needed.

Staff recommended continued delegation with the issues noted and recommendations made in the NCDOT Annual Review Report.

Ms. Smith asked why ICAs were not issued when NCDOT staff noted maintenance issues on inspection reports. Ms. Rodgers indicated some projects are working to improve and progress has been made, but an ICA should be considered when dealing with ongoing maintenance issues. Mr. Lee indicated NCDOT Roadside Environmental inspectors are calibrated with DEMLR to ensure consistency with inspections. He added an ICA is viewed internally as a serious issue, and action is taken to rectify concerns immediately.

Ms. Deck mentioned an ICA issued on the Goldsboro project, and noted the Washington regional office did not conduct a follow-up inspection. Ms. Rodgers indicated staff is making sure regional offices are aware of the need to follow-up on ICAs issued for any NCDOT project.

Ms. Deck pointed out that DEMLR issued one NOV to NCDOT between July 2014 and June 2015. Ms. Rodgers indicated staff is holding the regional offices accountable for conducting more NCDOT inspections. Any projects worthy of issuing a NOV should receive one.

Mr. Bivens asked staff to clarify the issue of stockpiles on shoulders for the SCC members. Ms. Rodgers indicated some areas had stockpiles located adjacent to inlets with no groundcover in place, which had the potential for offsite sedimentation issues. She added various options could have been used to protect the inlet, such as silt fence or wattles in the ditch. Mr. Bivens indicated better site management would have been beneficial. For instance, staging the progression of work along the shoulders and removing measures as necessary.

Mr. Hughes made a motion to continue delegation. Ms. Deck seconded the motion, and it was approved unanimously.

Local Program Reviews – Ms. Karyn Pageau

Ms. Pageau gave a report on the reviews of the Durham County and the City of Greenville delegated programs. A copy of the Local Program Report to the SCC is attached to the original minutes.

Durham County

On October 26, 2015, Joe Dupree, Tessa Monday, and Karyn Pageau conducted a review of the Durham County Local Program. Three staff positions contribute 3 full time equivalents to the erosion control program. The lead erosion control position is currently vacant and the program is currently being managed by a member of the stormwater staff until that position is filled. The county has 119 active projects. During the past year, the County has reviewed 135 plans, with 135 approvals, 0 disapprovals, and has conducted 1,433 inspections. The County issued 16 notices of violations, no stop work

orders, and has assessed 0 civil penalties in the past 12 months. Four projects were reviewed and inspected in the field.

The Durham County Local Program went without an inspector for approximately 10 months in the last year and hired a temporary employee to assist with inspections until a full time person could be hired. The local program found deficiencies in the temporary employee hired and terminated that contract. Durham County has since hired a full time inspector, but has lost the lead erosion control officer. 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 during the plan review process. Ensure sequence for converting sediment basins to permanent stormwater measures (including dewatering sequence), stream crossing sequence/detail, and slope drains are considered during the plan approval process.
- 3) Organize paperwork in files to adequately document the plan review process, including calculations, DWR authorizations, and sites that fall in the Upper Falls Lake Watershed, etc.

Staff recommends continued delegation.

Ms. Smith asked what happens if DEMLR determines a plan is not adequate. Ms. Pageau indicated a revised plan is requested, if construction activity has not passed the point of concern.

Ms. Smith asked if education on plan approval is needed for Durham County staff. Ms. Pageau indicated she is scheduled to meet with staff for further instruction.

Mr. Martin asked if DEMLR had been notified when the County lost the lead inspector, and was inadequately staffed to perform duties. Ms. Pageau indicated notification was not received from the County.

Ms. Smith asked if there are guidelines in place for the local programs to make such notifications. Ms. Pageau indicated there have been no procedures established for the process. Mr. Martin added guidance should be set forth statewide.

Mr. Eaves, Durham County Stormwater Manager, addressed the SCC to answer any questions regarding the Durham County staffing issues, and local program review.

Mr. Bivens pointed out that inspections need to be conducted by the County as required. Mr. Eaves indicated that a contract employee had been used to conduct inspections. The County plans to hire a full-time inspector during the current fiscal year, but plans are unsure for the vacant S&E division manager position. Mr. Bivens acknowledged the County did have a considerable number of inspections completed for the year.

Mr. Martin suggested the County should make contractors aware that failure to follow the approved plan will not be tolerated through issuing a NOV. Mr. Eaves indicated the County staff tries to make sure issues get addressed as they arise with projects.

Mr. Martin stated any issues with an approved plan should be corrected by the contractor with a revised plan. Mr. Eaves mentioned meeting with contractors to encourage plan revisions, and notification to County staff.

Ms. Smith mentioned the County has the ability to issue Stop Work Orders (SWO), but had not done so for any of the projects that were out of compliance. Ms. Pageau indicated there were issues with adequate plan review, resulting in approved plans that were insufficient.

Mr. Bivens asked how the plan review process works for the County. Mr. Eaves indicated one person generally conducts the review. He added he was not aware of any issues with plan reviews, but will address the topic with staff upon return.

Ms. Berry asked if Durham staff considered phasing the Fendol Farms Project to keep it better contained. Mr. Eaves indicated it should have been phased, but staff is working with the contractor to make progress on the site.

Ms. Deck asked if a NOV was issued by DEMLR or DWR for the off-site sedimentation. Ms. Pageau indicated the process is ongoing, and CPAs are underway.

Ms. Deck asked if the Star Solar Project is the first for Durham, and how they have handled the speed of construction. Mr. Eaves indicated the County has had a couple of solar projects. He added there has not been any problems with construction speed as the contractors have only cleared where solar cells are installed.

Mr. Bivens asked whether the County was submitting monthly activity reports, and was there any indication of an issue. Ms. Lowery-Jacobs confirmed monthly activity reports were submitted by the County, but no suggestion of any issues. Ms. Rodgers added DEMLR staff plans to present statewide local program statistics to the SCC going forward. Ms. Smith agreed the statistics would be helpful to the Commission.

Mr. Martin made a motion to defer the decision to continue delegation until after the staffing issue is addressed. Counsel indicated the Commission is unable to table an action item from one meeting to another. Mr. Martin withdrew his motion.

Ms. Smith asked whether probation might cause issue with Durham management. Mr. Eaves indicated it would cause no issue, but may be incentive to proceed with hiring.

Mr. Bivens made a motion to continue delegation with a probationary status for 6 months. Mr. Martin seconded the motion, and it was approved unanimously.

Mr. Bernier referred the Commission to §113A-60(c) of the Sedimentation Pollution Control Act, which requires 30 day notice to local programs that their program will be terminated if necessary.

City of Greenville

On January 27, 2016, Allison Ward and Karyn Pageau conducted a review of the City of Greenville Local Program. Two positions contribute 1.4 full time equivalents to the erosion control program. These positions are currently vacant and the program is being managed by the City Engineer and another member of his staff. The city has 12 active projects. During the past year, the City has reviewed 21 plans, with 20 approvals and 1 disapproval, and has conducted 4 inspections. The City has not issued any notices of violations nor has it assessed any civil penalties in the past 12 months. Four projects were reviewed and inspected in the field. Two projects were located in the Neuse and two in the Tar-Pamlico River Basin.

The City of Greenville Local Program has made significant changes since our last review including requiring phased erosion and sediment control plans, pre-construction meetings, and all the new files were well organized. The local program plans to have two staff positions dedicated to this program and these positions are being advertised. 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 during the plan review process.
- 3) Document inspections made on each approved site. Projects should be inspected at least monthly.
- 4) Organize paperwork in files to adequately document the plan review process, approval letters/certificate of plan approvals, FRO forms, inspection reports, deeds, and landowner authorization letters (when applicable).
- 5) Document consent of landowner with signed and notarized landowner authorization letters for projects where the financially responsible party is not the landowner.

Staff recommends continued delegation.

Ms. Deck acknowledged the City is issuing NOV's, but is concerned the program may be struggling. She proposed probation for an additional 6 months.

Mr. Bivens expressed concern that no NOV had been issued for any of the sites until the DEMLR review. He asked whether staff can see any progress with the program. Ms. Pageau indicated the program has made some improvement, but additional work needs to be done with inspection reports and follow-up inspections. The City staff needs additional training, which will be provided by DEMLR Central Office staff and the Washington Regional Office.

Ms. Smith indicated the City has been on probation for two years. Someone needs to address the SCC, and show effort made toward progress.

Ms. Deck stated the SCC has authority, according to the statutes, to take enforcement action if the local program does not. Ms. Rodgers confirmed DEMLR maintains concurrent jurisdiction with the local programs to enforce and conduct inspections.

Ms. Deck made a motion to continue delegation probationary status for 6 months, and invite City staff to address the SCC at the May meeting. Mr. Bivens seconded the motion, and it was approved unanimously.

Guidance on Issuance of Notices of Violation for Offsite Sedimentation – Ms. Ashley Rodgers

Ms. Rodgers gave an update on the Guidance on Issuance of Notices of Violation for Offsite Sedimentation. The latest version includes revisions to the “Recommendations for Issuance” section to remove the terms slight, moderate, and severe when evaluating off-site sedimentation.

Ms. Smith announced counsel advised a motion is needed to amend or rescind the document.

Mr. Martin expressed no issue with using the slight/moderate/severe terminology. He suggested there may be a need for a stakeholder group or committee to address the complexity of this issue. Ms. Rodgers indicated this was intended to help develop some consistency among the local programs and DEMLR staff, but the SCC should be careful not to get into rulemaking.

Ms. Deck asked whether the guidance document was presented for legal review. Staff did not recall submitting the document for official review by the attorneys. Mr. Vinson indicated professional judgement (including determinations of slight, moderate, or severe) has been used to provide guidance related to the Sedimentation Pollution Control Act (SPCA) for over 40 years.

Ms. Deck stated the SPCA has specific guidance on off-site sedimentation. Mr. Bernier referred the group to 15A NCAC 04B.0106, which identifies “Basic Control Objectives” of an approved plan. He added the rule pertains to offsite sediment as well as off-site sedimentation damage.

Ms. Deck stated the current draft document seems to have more potential for inconsistency than the original version. Ms. Rodgers indicated that the revised proposed guidelines are being presented by staff in response to comments and concerns received from Commissioners at the November meeting. She stated the guidelines document needs to be clear, but avoid issues with potential rulemaking.

Ms. Berry asked if these criteria apply to projects less than one acre. Ms. Rodgers indicated it applies to all land disturbing activities. Ms. Berry suggested making that clear to local programs when any guidance was sent out.

Mr. Bivens indicated some agencies have included the NOV as part of their qualification process for potential contractors, which can have a great impact. He supported staff using professional judgement to address this issue, or it may need to be handled by a stakeholder group to proceed further, but he preferred leaving the existing approved guidance in place during the stakeholder process. After much discussion, Ms. Smith asked whether the SCC wanted to form a stakeholder group to address the issue.

Ms. Smith made a motion to allow a stakeholder group to proceed with Guidance on Issuance of NOVs. Ms. Berry seconded the motion, but it was opposed by a majority vote: Knotts, Bivens, Randolph, and Hughes. The motion failed to pass by a vote of 3-4.

Ms. Knotts asked for a clarification of the vote. Ms. Smith indicated the issue would not proceed to a stakeholder group, and the original Guidance on Issuance of Notices of Violation for Offsite Sedimentation document dated October 14, 2015 remains in effect.

INFORMATION ITEMS

Rules Review Process Update – Ms. Rodgers provided a report on the status update on the Rules Review Process.

There are 26 rules categorized as Necessary with Substantive Public Interest that will need to be reviewed by a stakeholder group. DEMLR is estimating approximately a 3.5-year rules readoption/amendment timeframe, which should be completed around October 2019.

Ms. Smith asked to be included in the stakeholder process. Ms. Rodgers indicated the stakeholder group should include representatives from the following interest areas: Design, Research, Soil Science, Local Programs, Utilities, and NCDOT. She asked whether the SCC would like to approve the members appointed to the group. Mr. Vinson added the SCC has included members from the Technical Advisory Committee and Education Committee in the past.

Mr. Bivens asked if staff could put together a list of potential members and present the list to the SCC as an informational item to ensure that the group is balanced and represents all needed stakeholders. Ms. Rodgers stated staff would present a draft stakeholder group at the May SCC meeting.

Sedimentation Control Commission Fee Schedule Study Group – Mr. Toby Vinson provided a report on the status update on Sedimentation Control Commission Fee Schedule Study Group. Mr. Vinson indicated staff has recommended a fee increase again during the upcoming legislative session.

Ms. Deck asked if it would be helpful for the SCC to speak with the Secretary's Office. Mr. Vinson recommended allowing DEMLR staff to contact DEQ management prior to attempting to contact the Secretary.

Ms. Smith suggested forming a small group to show support of staff in an attempt to move the fee increase proposal forward with the Department. The following SCC members volunteered to assist as needed: Berry, Deck, and Bivens.

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 ICA's that have been issued since November 1, 2015. No Trout Buffer Waivers for Secondary Road Projects have been issued. 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.

Ms. Smith encouraged staff to educate local program staff on plan review. Ms. Rodgers mentioned plans for such training at the upcoming local program workshop, including updates on enforcement and the recent SPCA changes.

Sediment Program Status Report – Mr. Cole provided a report on the LQS current plan approval, inspection, and enforcement activities statewide.

Land Quality Section Report – Mr. Cole provided a report on the current number of vacancies in the Section and other LQS activities and issues. He thanked staff for their efforts.

CONCLUSION

Remarks by the Director – Mr. Cole announced the Division's recent reorganization in November, in which the Energy Section and NC Geological Survey Section were moved from DEMLR to the new Energy Group in the Secretary's Office.

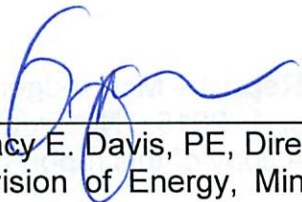
Remarks by the Commission – Ms. Berry volunteered to serve as needed on future

committees established by the SCC.

Remarks by the Chair – Ms. Smith asked Mr. Bernier to update the commission members on recent actions by the Governor that could potentially affect the Commission, including the court case regarding appointments to Commissions.

Adjournment – Ms. Knotts made a motion to adjourn. Mr. Bivens seconded the motion, and it was approved unanimously. As there was no further business, Ms. Smith adjourned the meeting at 1:24 pm.

Stephanie Lane, Recording Secretary



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