

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
August 18, 2011
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on August 18, 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
Dr. Bill Miller
Mr. Robert Weintraub
Dr. Michael Voiland
Ms. Heather Jacobs Deck
Mr. Ricky Vick
Dr. Rich McLaughlin
Mr. Kevin Martin
Mr. Randy Veltri
Mr. Manly West

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. John Holley, Land Quality Section, RRO
Mr. Rufus Allen, AG's Office
Mr. John Payne, AG's Office
Mr. Karen Pageau, Land Quality Section, RRO
Ms. Jennifer Roach, NCFS
Ms. Gail Bledsoe, NCFS
Mr. Dave Andres, NCFS
Mr. Sean Brogan, NCFS
Ms. Melanie McCaleb, NCSU
Mr. John Huisman, DWQ
Mr. Matt Flynn, Town of Cary

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 May 17, 2011 meeting.

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

Mr. Nevils introduced Ms. Deck as a new member of the Commission, replacing Ms. Chiosso. Ms. Deck is the Pamlico-Tar Riverkeeper, and has participated with the erosion and sediment control program in various capacities.

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

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

Avery County - Mr. Gray Hauser

The Avery County local program was reviewed July 13 and 14, 2011. The County has 22 approved projects, 17 of which are active. Five projects were reviewed. Staff recommended continued delegation.

Ms. Deck inquired on training requirements for the delegated staff. Mr. Hauser indicated certification is not required, and the program evaluation is based upon performance. The Planning Director has an extensive background in erosion control and is well-qualified.

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

City of Jacksonville - Mr. Mell Nevils

The City of Jacksonville Local Program was reviewed July 21, 2011 at the request of the city staff. The City had not done any enforcement in the last several months. A new City Manager had been hired, and is in trying to determine how to handle non-compliance.

Six projects were evaluated. Five of the six projects reviewed had violations and had been issued NOVs. A close-out meeting was held with the City Manager and Engineer and other city staff as well as several developers. The Manager had received contractor complaints claiming city staff was stricter than state staff on project inspections. The lack of enforcement was discussed. The City was asked to take effective enforcement

action against projects that remain in violation, and was to conduct a meeting with contractors in the following weeks. The City is also involved in discussions of whether to continue the delegated program. Currently, the City is not taking any enforcement actions to achieve compliance.

Mr. Nevils had received a letter from the City of Jacksonville prior to the Commission meeting expressing continued interest in the delegated program. The City is willing to pursue enforcement. Mr. Nevils said his initial recommendation was to continue the review until November, 2011, but based on the letter, Mr. Nevils suggested continued delegation of the program.

Chairman Smith indicated a motion could be offered to accept the original recommendation of continuing the review until November 2011, or the modified recommendation of continued delegation.

Staff recommended continued delegation of the program with a report back from staff by the next SCC meeting.

After considerable discussion, Mr. Martin made a motion to continue the delegation with conditions: 1) clarify (in response letter) that building code inspections will cease, and 2) clarify (in response letter) that appropriate steps will be taken promptly to achieve compliance. Mr. Allen indicated the delegation could be contingent, and the Commission has the authority to revoke the delegation at a later point in time. Mr. Glass seconded the motion.

Dr. Miller indicated the Commission has the right to revoke the delegation, but the City of Jacksonville has a long history of being a good program. Dr. Miller made a motion to continue the delegation, without condition.

Mr. Veltri expressed concerns regarding NOV's issued on projects, and uncertainty that issues have been corrected. Mr. Nevils stated 5 NOV's and 2 CNOV's had been issued, within the last three months. The NOV's had not been corrected at the time of the review by Mr. Nevils. Mr. Veltri acknowledged being uncomfortable with continued delegation of the program.

Chairman Smith summarized the motions submitted for consideration by the Commission:

Motion submitted by Mr. Martin: continue the delegation with some contingencies on wording of response letter. Motion seconded by Mr. Glass.

Substitute Motion submitted by Dr. Miller: continue the delegation. Motion seconded by Mr. Vick. The final vote count was 6 in favor and 3 opposed. The motion carried.

INFORMATION ITEMS:

Update on Fall's Lake Rule – Gray Hauser

Mr. Hauser indicated the economic impact analysis has been approved by the Department of Budget Planning Analysis and the Office of State Budget Management. The rule will be published for public notice during September.

Legislative Update – Mr. Rufus Allen

Mr. Allen provided an update on 2011 Session Laws that affect the SPCA. A copy of the Legislative Update is attached to the original minutes.

Section 3 of G.S. 113A-54.1 was amended to include an exception to allow utility companies to submit sedimentation control plan without written consent of the land owner, so long as the owner has prior notice of the project.

Mr. West asked who is held accountable if the project is out of compliance. Mr. Allen indicated the financially responsible party that is identified, typically the utility company.

Mr. Glass indicated utilities are extended at the expense of the developer. The utility company has no financial interest at that point. He asked whether the land owner could be held responsible in the event the contractor/developer encounter bankruptcy.

Mr. Allen indicated that the applicant, typically utility companies, would be held financially responsible.

Mr. Nevils indicated projects involving property with right-of-way easements do not require written consent, from landowners, to perform erosion and sediment control work. Developers installing utilities on property, owned by the development company, will be held accountable as the financially responsible party and the landowner.

Section 13.6 of G.S. 143B-279.16 was amended to allow a time period of 10 days between the time the violator is sent a notice of violation, and the date the violator is issued the civil penalty. This is complicated by Senate Bill 781, which indicates if House Bill 200 becomes law then G.S. 143B-279.16 is repealed. The intent of the General Assembly is unclear until the amendments are codified into the General Statutes.

Senate Bill 781 also impacts the Commission in the rule-making provisions. Additional steps are required before a permanent rule can be adopted by a rule-making body, and are outlined in 150B-19.1 and 150B19.2.

Mr. Martin questioned whether a discussion (by a Commissioning body) of two rule alternatives satisfied the requirements outlined in 150B-19.1(f), or must multiple alternatives be sent out to hearing. Mr. Allen indicated the matter is not clear and will be enforced by the Rules Review Commission.

Mr. West questioned whether meeting minutes would prove consideration of rule alternatives. Mr. Allen indicated alternatives must be published in the rule notice.

Mr. Allen indicated G.S. 150B-19.3 (limitation on certain environmental rules) applies directly to the SCC. The statute outlines five situations when an agency can adopt a new rule.

G.S. 150B-21.4 requires a fiscal note for any substantial economic impact greater than five hundred thousand dollars (\$500,000). The fiscal note must also include a description of the consideration of two alternatives for the proposed rule, and were rejected by the agency.

Forestry

Mr. Allen discussed the structural change of DENR due to House Bill 200, which included a Type I transfer of the Division of Forestry to the Agriculture Commission. The transfer impacts the SCC and the sediment program because the DENR Secretary is authorized to promulgate rules for Forest Practice Guidelines (FPG's). The Secretary delegated the authority to enforce the FPG's to the Division of Forest Resources, and continued delegation is pending because of the recent departmental transfer.

Mr. Sean Brogan, NC Forestry Service, discussed the effectiveness of the program policies to ensure Forest Practice Guidelines (FPG's) are implemented. He indicated Wib Owen, the State Forester, is supportive of keeping the task of enforcing the FPG's.

Mr. Glass asked whether there is an indication that program policies will change, since the departmental transfer. Mr. Brogan indicated the Department of Agriculture has a service oriented approach and would support the FPG's as the best way to mitigate water quality problems prior to enforcement.

Ms. Smith asked about the process when FPG's are not implemented. Mr. Brogan indicated inspection forms are completed to identify issues, and BMP recommendations are provided with a compliance date. Sites that are non-compliant with FPG's are referred to various agencies (DLR, DWQ) for evaluation. He indicated only 10-15 sites proceed with enforcement, per year.

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 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 -- Mr. Simons thanked Ms. Smith for her efforts.

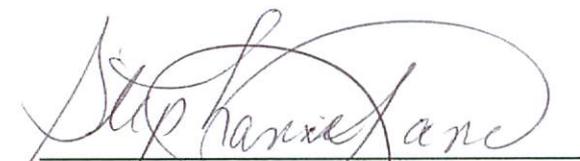
Remarks by the Commission Members -- Mr. Vick has served 6 years and is rotating off the SCC. He enjoyed his tenure and participation on the Commission. He expressed thanks to Ralph Stout, former SCC member, who provided guidance during the beginning of new term.

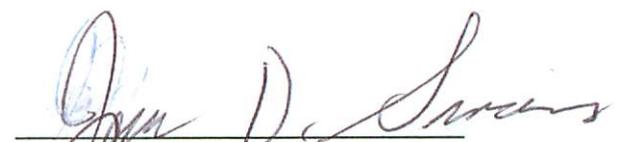
Dr. Miller has served 6 years and is rotating off the SCC. He enjoyed his tenure and expressed thanks to the Commission.

Dr. Voiland recognized staff for a remarkable job during a tough fiscal year.

Remarks by the Chair -- Ms. Smith thanked Mr. Vick and Dr. Miller for service to the Commission and wished them well in future endeavors.

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


Stephanie Lane, Recording Secretary


James D. Simons, Director