

MINUTES  
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION  
AUGUST 14, 2019  
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING  
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on August 14, 2019 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**

Dr. Susan White (Chair)  
Mr. Jonathan Bivens  
Ms. Natalie Berry  
Mr. Michael Willis  
Ms. Heather Deck  
Mr. Mark Taylor (via phone)  
Mr. Hartwell Carson  
Ms. Karla Knotts  
Ms. LaToya Ogallo  
Dr. John Havlin

**OTHERS**

Mr. Daniel Smith, Director, DEMLR  
Mr. Matt Gantt, Regional Operations Chief, DEMLR  
Ms. Julie Coco, State Sedimentation Engineer, DEMLR  
Mr. Taylor Young, Assistant State Sedimentation Engineer, DEMLR  
Ms. Rebecca Coppa, State Sedimentation Education Engineer, DEMLR  
Mr. Boyd DeVane, DEMLR  
Ms. Christy Simmons, Public Information Officer for DEMLR  
Ms. Mary Crawley, Assistant Attorney General, Attorney General's Office  
Mr. Jeevan Neupane, Wake County  
Mr. Kirk Stafford, Town of Cary  
Mr. Tom Gerow, Jr., NCFS  
Mr. Jim Iannucci, New Hanover County  
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office  
Mr. Mike McIntyre, Town of Huntersville  
Ms. Jackie Huffman, Town of Huntersville  
Ms. Angela Beeker, Town of Huntersville  
Mr. M. Kevin Fox, Town of Huntersville

## **PRELIMINARY MATTERS**

Dr. White called the meeting to order.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts. Dr. White recused herself from the DEMLR-WRRI proposal action item vote on the agenda.

Dr. White asked for a motion to approve the minutes from the May 29, 2019 meeting. Ms. Berry moved to approve minutes. Mr. Bivens made a second; the motion passed, and the minutes were approved.

## **ACTION ITEMS**

The Chair modified the order of the action items on the agenda to allow for the first review to be that of the New Hanover County Program.

### **County of New Hanover Local Program Review**

Mr. Young summarized the DEMLR staff review of the New Hanover County Program. The program is under continued review. Mr. Young also reiterated concerns the Commission had from the last meeting over this program, including the County's memorandum to the public dated 1/1/2018. Ms. Ogallo questioned why the original memo was issued. New Hanover County staff responded by stating that the County works with the regulated community before problems escalate to the point of needing a Notice of Violation; the memo was issued to provide expectations for the regulated community. The DEMLR staff recommended to continue their review of New Hanover County for the next six months. Ms. Ogallo questioned DEMLR staff as to what they expect to achieve with a continued review. The DEMLR staff responded that they would like to see more enforcement actions and more responses to repeat violations thus, ensuring that County staff are adhering to the revised July 10, 2019 memorandum distributed to the public in response to DEMLR's review.

The motion was as follows:

Ms. Deck moved to continue delegation with continued review of the program for six months. Ms. Berry made a second. The Commission voted to continue delegation authority with a continued review of the program. The motion passed.

### **Town of Lake Lure Local Program Review**

Mr. Young summarized the DEMLR staff review of the Town of Lake Lure Program. The program is under continued review. Staff recommended to remove the program from review and to continue delegation authority.

The motion was as follows:

Ms. Berry moved to remove the program from review and to continue delegation of the Town's program. Ms. Knotts made a second. The Commission voted to continue delegation authority for the program. The motion passed.

### **County of Gaston Local Program Review**

Mr. Young summarized the DEMLR staff review of the Gaston County Program. Ms. Knotts noted that one of the sites reviewed should be labeled as "Belmont". Staff recommended to continue delegation authority for the program.

The motion was as follows:

Mr. Bivens moved to continue delegation of the County's program. Ms. Deck made a second. The Commission voted to continue delegation authority for the program. The motion passed.

### **Rescission of the City of Newton Local Program Delegation**

Mr. Young summarized the City's request to rescind their local program delegation. The DEMLR staff recommend that the Commission vote to rescind the City of Newton's delegation and to allow Catawba County's existing program to assume administration of the program within the City's territorial jurisdiction effective September 1, 2019. Staff also recommended that the DEMLR regional office assume administration of the program during the two-week period from August 14 – September 1, 2019.

The motions were as follows:

Ms. Deck moved to rescind the City of Newton's delegation authority for administering the Sedimentation Pollution Control Act. Mr. Carson made a second. The Commission voted to rescind the City of Newton's local program delegation. The motion passed.

A Commission member requested information on a history of Catawba County reviews, including the last time it was reviewed with the decision made by the Commission.

Mr. Carson moved to have Catawba County assume administration of the program within the City of Newton's territorial jurisdiction. Dr. Havlin made a second. The motion passed.

Mr. Willis moved to authorize the Chairperson to sign the Memorandum of Agreement for rescission on behalf of the Commission. Mr. Bivens made a second. The motion passed.

## **Ordinance Reviews & Delegation Requests**

Ms. Coco introduced the Towns of Weddington and Huntersville. Each requested approval of their erosion and sedimentation control ordinances. During this introduction, she noted that each municipality has submitted ordinances to the Commission for review which have previously been adopted by their local boards or councils. She also summarized the Commission's voting options to Approve, Approve with Modification(s), or Disapprove the ordinances.

### **Town of Weddington Ordinance Review & Delegation Request**

Ms. Coco summarized the Town's territorial classifications and the extent of their proposed jurisdiction as they relate to their ordinance. Ms. Knotts questioned the Town's language within the ordinance in regard to when a plan is required. Mr. Bivens suggested that the Town was attempting to exclude the requirement for a plan for single-family developments that are less than one acre in size, and those that are also not within a common plan of development or sale that is equal to or greater than one acre in size. He continued by stating that the Town could be attempting to prevent lots from operating without an approved plan which are less than one acre and inside these common plans of development that would ultimately disturb greater than one acre. Mr. Bivens suggested the Town provide a lower land-disturbance threshold for erosion and sediment control plan approval. Ms. Deck asked if approving the ordinance also meant approving delegation authority. Ms. Coco answered in the affirmative. Dr. White stated that it would be helpful for the Commission to have information which would determine the local government's capacity in administering a program. Dr. White posed the question to the members as to whether language included in the Model Ordinance should be included within a local ordinance, if it is not currently applicable to the local government.

No motions were made. The Town withdrew their request for approval of their ordinance, and stated they will present a new local ordinance based on the 2018 Model Ordinance. The new ordinance will be presented at a future date yet to be determined.

Dr. White proposed that a small sub-committee of Commissioners work with DEMLR and the Commission's counsel to improve processes for ordinance reviews for both content and timeliness. The sub-committee will assist in reviewing new and revised local ordinances if needed for future ordinance actions. Ms. Knotts, Ms. Berry and Ms. Deck volunteered to serve on the sub-committee.

### **Town of Huntersville Ordinance Review & Delegation Request**

Ms. Coco summarized the Town's territorial classifications and the extent of their proposed jurisdiction as they relate to their ordinance. The Town Attorney addressed questions from the Commission members. She also stated that the Town of Huntersville is separating their Department of Engineering and Public Works into two departments

with two directors. A recommendation was sought from DEMLR staff. Staff provided a summary of necessary modifications to the proposed ordinance.

The members agreed not to require the ordinance to come before the Commission a second time. Mr. Bivens made the motion to delegate authority to the DEMLR staff and the Commission's counsel to negotiate modifications that will approve the Town's ordinance and program delegation, if the ordinance adopted by the Town reflects what is agreed to between the Town, DEMLR staff and Commission's counsel. Mr. Carson made a second. The motion passed.

### **DEMLR-WRRI Proposal for Support of the 2020 Local Programs Workshop & Awards Banquet**

Ms. Coppa presented the proposal for this annual workshop and awards luncheon. She asked the Commission to vote on approval for the use of contract services, as proposed, in support of the Local Program Workshop/Awards Luncheon.

Ms. Knotts moved to approve the use of contract services as proposed. Ms. Deck made a second. Dr. White abstained from voting. The motion passed.

## **INFORMATION ITEMS**

### **NC DOT Program Review Status**

Mr. Young offered to answer questions regarding the status of DEMLR's continued review of the NCDOT's delegated Erosion and Sedimentation Control Program. Ms. Deck expressed an interest in having the DOT respond to post-storm conditions at the next meeting.

### **NCG01 Permit Changes**

Ms. Coco discussed the new permit, the federal requirements, and their effect on the regulated community as well as government agencies. Handouts explaining the federal permitting process were provided to the members. A discussion ensued on the definition of a "common plan of development or sale" and when it applies. When asked of their opinions regarding the effects that requiring plans for sites disturbing less than one acre in a "common plan" would have, some members commented that this question might be more appropriate for the Environmental Management Commission. Members inquired as to DEMLR's recommendation on how to proceed as well as how the DEMLR regional staff are implementing the NCG01 permit. Ms. Coco urged the members to study the implications of this permit language and how it affects the Local Programs. Commission members requested access to Ms. Coco's presentation.

### **Commission Internal Operating Procedures (By-Laws)**

Dr. White moved the discussion on creating internal operating procedures (by-laws) for the Commission to the November meeting. She is requesting ideas from members, and would like for them to come prepared to discuss by-laws at the November meeting.

### **List of Potential Topics for a new Commission Technical Committee**

Ms. Rebecca Coppa presented a list of ideas, or potential topics, that the commission members submitted to the DEMLR. The purpose of the list was to prompt members on what topics the Committee should address. Dr. White noted the need to have by-laws in place prior to holding the Committee meetings.

### **Land Quality Section Active Sediment Cases Report and Enforcement**

Ms. Coco reported on the status of civil penalty assessments and judicial actions.

### **Education Program Status Report**

Ms. Coppa reported on recent Sediment Education Program activities. The number of workshops orchestrated for our designers, planners, and contractors has increased from 1 to 2 workshops in a year. Workshops will be held on October 8, 2019 in Hickory and on December 3, 2019 in Raleigh. Ms. Coco thanked Dr. White for administering this year's local program awards to Chatham County and Lincoln County.

### **Sediment Program Status Report**

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities as of the end of the fiscal year. She presented the form under which locally delegated programs are reporting. She also asked the members to consider re-adopting the form based on changes to the NCG01 permit that affect reporting, and other data that may need to be collected in order to adequately determine a program's capability. Mr. Young suggested that the Commission also review and adopt definitions for the data being requested. Dr. White stated that these requests should be placed on the next meeting agenda as an action item.

### **Land Quality Section Report**

Mr. Smith provided a report on the current number of vacancies within the Land Quality Section. There are currently five vacancies throughout the state. He noted that the DEMLR central office staff have been conducting Local Program reviews at an increasing frequency. He stated the Sedimentation Control Program's efforts to evaluate and improve performance management in several areas, including plan approval timelines and inspection priorities based on risk factors. One area includes the development of reliable software to track plan intake, monitoring, compliance, and the reporting of projects. A Public Hearing on the NC Administrative Code, Chapter 04B rules ("The Sediment Rules") was held on August 1<sup>st</sup>. Mr. Smith stated that this hearing initiated a public comment period; the deadline for submittal of comments by the public is September 13, 2019.

## **CONCLUSION**

**Remarks by the DEMLR Director** – Mr. Smith thanked the DEMLR staff, the Counsel to the Commission, and the Chair for their work in preparing for and conducting this meeting. He also thanked the Commission members for assisting DEMLR staff in their endeavors.

**Remarks by Commission Members** – Ms. Knotts’ and Dr. Havlin’s terms on the Commission have expired. Ms. Ogallo’s and Mr. Willis’ terms have expired, but their positions are being considered for renewal. Ms. Knotts is also the Ethics Liaison to the Commission; her responsibilities will continue until there is a re-appointment for her position. Ms. Ogallo has agreed to assume the responsibilities of the Ethics Liaison at that time. Ms. Knotts reminded members about the requirements for filing statements of economic interest and completing ethics education.

**Remarks by Chairman** - Dr. White reiterated the effort that is needed on some of the new agenda topics. She thanks staff and everyone’s patience for the long meetings, and believes the Commission is making progress in several areas.

**Adjournment** – Ms. Deck moved to adjourn the meeting. Ms. Knotts made a second. The motion to adjourn the meeting passed. Dr. White adjourned the meeting at approximately 1:49 pm.

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Julie Coco, PE, State Sediment Engineer  
Division of Energy, Mineral, and Land  
Resources

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S. Daniel Smith, Director  
Division of Energy, Mineral, and Land  
Resources

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Dr. Susan White, Chair  
Sedimentation Control Commission