

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
NOVEMBER 4, 2019
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 4, 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
Mr. Hartwell Carson
Ms. Susan Foster
Ms. LaToya Ogallo
Dr. John Havlin
Mr. Robert (Jason) Conner
Ms. Marion Deerhake

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. Andrew Lake, Wake County
Ms. Melinda Clark, Wake County
Ms. Karyn Pageau, Wake County
Mr. Kirk Stafford, Town of Cary
Mr. Matt Flynn, Town of Cary
Mr. Jeff Hall, Town of Cary
Mr. Todd Hoefler, Town of Cary
Ms. Ashley Rodgers, City of Raleigh
Mr. Tom Gerow, Jr., NCFS

Mr. Zac Lentz, DEMLR-Winston Salem Regional Office
Mr. David Harris, NCDOT
Mr. Ben DeWit, NCDOT
Mr. Jeremy Goodwin, NCDOT
Ms. Lisa Thompson, Town of Weddington (via phone)
Ms. Bonnie Fisher, LaBella Associates (via phone)

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. New members Marion Deerhake, Susan Foster, and Robert Conner were sworn in before the meeting was called to order. Ms. Ogallo read the conflicts of interest information into the record for each of the new members. 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 asked for a motion to approve the minutes from the August 14, 2019 meeting. Ms. Deck moved to approve the minutes. Mr. Bivens made a second; the motion passed, and the minutes were approved.

ACTION ITEMS

Request for Approval of Hearing Officer's Report, Regulatory Impact Analysis and Adoption of Amendments to 15A NCAC Chapter 04 – Sedimentation Control

Staff member Boyd DeVane explained that state agencies are required by statute to review their rules at least once every ten years, and that the Commission must readopt the rules by November 30, 2019 or they will expire. Mr. DeVane presented a summary of the rules evaluation process undertaken for the Commission and a summary of the Hearing Officer's Report.

Hearing Officer Daniel Smith, Director of the DEMLR, presented the Hearing Officer's Recommendations. They were as follows:

Recommendation 1:

Approve the Hearing Officer's Report which includes the Corrected Final Rules Proposed for Adoption.

Recommendation 2:

Adopt the *Regulatory Impact Analysis* as provided to the Commission today in the Hearing Officer's Report.

Recommendation 3:

Adopt the Rules published in the North Carolina Register on July 15, 2019, with the changes made post-publication as presented to the Commission today in the “*Corrected Final Rules Proposed for Adoption*” accompanying the Hearing Officer’s Report.

Mr. Taylor moved that the Commission adopt the Hearing Officer’s Report with accompanying Corrected Final Rules Proposed for Adoption, approve the Regulatory Impact Analysis approved with the Rules on May 29, 2019 with the changes made post-publication as provided to the Commission today in the Hearing Officer’s Report, and adopt the Rules published in the North Carolina Register on July 15, 2019, with the changes made post-publication as provided to the Commission today in the “Corrected Final Rules Proposed for Adoption” accompanying the Hearing Officer’s Report. The members engaged in discussion. Mr. Bivens made a second. The motion passed.

Town of Weddington Ordinance Review & Delegation Request

Ms. Coco presented the Town’s ordinance to the members. One member stated that an inconsistency exists between paragraphs (a) and (e) within Section 58.606 requiring plan reviews by local soil and water conservation districts. Staff confirmed with Town representatives of their desire not to require plan reviews by these districts.

Ms. Deck moved to approve the Town of Weddington ordinance contingent upon removing paragraph (e) and upon conducting an informal review of their program within one year of the effective date of their delegation. Ms. Ogallo made a second. The motion passed.

Ms. Deck moved to provide the Chair with the authority to sign the Memorandum of Agreement between the Sedimentation Control Commission and the Town of Weddington upon the Town making the required revision to the ordinance and adoption of the ordinance. Mr. Carson made a second. The motion passed.

Town of Huntersville Memorandum of Agreement

Ms. Coco presented the Town’s Memorandum of Agreement with modifications to the members for review and approval. The modifications, which were made by DEMLR staff, involved required changes related to the NCG01 permit, and changes made to more closely align with the language within the Sedimentation Pollution Control Act.

Mr. Taylor moved the Commission approve the Memorandum of Agreement as drafted with these modifications. Mr. Carson made a second. The motion passed.

Mr. Taylor moved the Commission authorize the Chair to sign the Memorandum of Agreement once the required revisions to the ordinance have been made as directed by DEMLR staff and the Commission Counsel, and once the updated ordinance has been adopted. Ms. Ogallo made a second. The motion passed.

County of Haywood Local Program Review

Mr. Young summarized the DEMLR staff review of the Haywood County Program. Staff recommended to continue the review of the program for another six months with a report to be submitted to the Commission at the second quarterly meeting in the year 2020.

The motion was as follows:

Mr. Carson moved to accept DEMLR staff's recommendation to continue review of the program for six months with a follow up report to be presented at the second quarterly meeting in the year 2020. Mr. Taylor made a second. The Commission voted to continue delegation authority for the program. The motion passed.

County of Buncombe Local Program Review

Mr. Young summarized the DEMLR staff review of the Buncombe County Program. Staff recommended to continue delegation of the County's program.

The motion was as follows:

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

County of Mecklenburg Local Program Review

Mr. Young summarized the DEMLR staff review of the Mecklenburg County Program. Staff recommended to continue delegation authority for the program.

The motion was as follows:

Mr. Taylor 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.

Town of Cary Local Program Review

Mr. Young summarized the DEMLR staff review of the Town of Cary's Program. Staff recommended to continue delegation authority for the program.

The motion was as follows:

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

Local Program Reporting Format

Ms. Coco presented the members with the existing, Commission-approved format by which Local Programs are reporting to the DEMLR. She also presented a proposed

format, based in part, upon changes imposed due to renewal of the NCG010000 permit and those recommended to better assist staff with gauging the effectiveness of programs. This presentation generated several questions from the members. The Chair asked the members of the need to vote on this matter, and suggested that it may be more beneficial as an occasional update to the members. The Chair changed this from an action item to an information item. The Chair recommended that DEMLR staff modify the format by which Local Programs are reporting based upon feedback from the members. The DEMLR staff will provide the SCC with an update on changes at the second quarterly meeting in the year 2020.

NCDOT Review

Mr. Young summarized the DEMLR staff review of the North Carolina Department of Transportation's delegated program. Fourteen projects were reviewed between April and October of the year 2019. A variety of projects were chosen. Mr. Young mentioned his positive as well as negative findings. Staff recommended to continue delegation authority for the program. Questions were asked of the NCDOT staff present at the meeting.

The motion was as follows:

Mr. Bivens moved to continue delegation of the NCDOT program. Mr. Taylor made a second. The Commission voted to continue delegation authority for the program. The motion passed.

INFORMATION ITEMS

Update on Sedimentation Program Initiatives in Response to the Report sent to the Joint Legislative Program Evaluation Oversight Committee

Mr. Smith, Director of DEMLR, presented updates from the DEMLR as to Local Program reporting requirements and agreements, the analysis of DEMLR plan reviews, the prioritization of inspections based on risk, the development of statewide inspection performance standards, the development of a formalized request and review process for local governments seeking program delegation, and as to the development of a process and timeline by which Local Program ordinances are reviewed and updated.

By-laws Update

The Chair continues to work with Counsel on developing internal operating procedures for the Commission.

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. One hundred and ten (110) people attended the October 8, 2019 workshop in Hickory. Feedback from the workshop was generally positive. The next workshop is scheduled for December 3, 2019 in Raleigh. Ms. Coppa thanked the Chair for agreeing to provide the opening remarks at the December workshop. Sedimentation Program staff are once again publishing the bi-annual newsletter called *Sediments*. Commission members are welcome to contribute to this newsletter.

Sediment Program Status Report

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities.

NCDOT Report

Ms. Coco reported on the *Immediate Corrective Action* reports and follow-up inspection reports issued by the NC Department of Transportation since the last meeting.

Land Quality Section Report

Ms. Coco reported on the number, description and location of position vacancies within the Division.

CONCLUSION

Remarks by the DEMLR Director – Mr. Smith thanked the Commission members for their assistance in adopting rules and approving documents related to Chapter 04 of the NC Administrative Code. He also thanked the DEMLR staff for their work on reviewing and revising the rules, conducting hearings, and presenting the information. Mr. Smith welcomed the new members and looks forward to working with them.

Remarks by Commission Members – Ms. Berry inquired about the scheduled November 21, 2019 meeting. The Chair questioned the members as to the necessity of this meeting. Hearing no objections, Dr. White cancelled the November 21, 2019 meeting.

Remarks by Chairman – Dr. White remarked that she appreciates the work that the sub-committee is conducting along with the DEMLR staff on program delegation processes. Dr. White appointed Ms. Foster to the sub-committee. Dr. White designated Ms. Berry to be chairperson of the sub-committee and designated Ms. Deck to be vice-chairperson of the sub-committee.

Adjournment – Dr. White adjourned the meeting at approximately 1:44 pm.

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

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

Dr. Susan White, Chair
Sedimentation Control Commission