

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
May 24, 2012
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on May 24, 2012 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
Mr. Jonathan Bivens
Dr. Michael Voiland, Vice Chair
Mr. Manly West
Ms. Heather Deck
Mr. Kevin Martin
Mr. Randy Veltri
Mr. Rob Weintraub
Mr. Tommy Anderson
Dr. Bill Miller
Dr. Rich McLaughlin

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. Matt Poling, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Mr. Rufus Allen, AG's Office
Mr. John Payne, AG's Office
Mr. David Harris, NC Department of Transportation
Mr. Johnie Marion, NC Department of Transportation
Mr. Ricky Green, NC Department of Transportation
Mr. Don Lee, NC Department of Transportation
Mr. Terry Gibson, NC Department of Transportation
Ms. Melanie McCaleb, NCSU
Ms. Nicole Wilkinson, WRRRI
Mr. Kirk Stafford, Town of Cary
Mr. Todd Hoefler, Town of Cary

Mr. Berry Jenkins, Carolinas AGC
Ms. Amy Simes, NCDENR
Ms. Becky Johnson, NCLCV
Mr. Jamie Kritzer, NCDENR
Ms. Kristin Hicklin, Land Quality Section
Mr. Zahid Khan, Land Quality Section
Mr. Paul Worthington, Land Quality Section
Mr. Dan Sams, Land Quality Section
Mr. Pat McClain, Land Quality Section
Ms. Laura Herbert, Land Quality Section
Mr. Brad Cole, Land Quality Section
Ms. Janet Boyer, Land Quality Section
Mr. Scott Godefroy, City of Greenville
Mr. Tim Corley, City of Greenville
Mr. Chris Kelly, City of Greenville
Mr. Floyd Williams

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 February 28, 2012 meeting. Mr. Martin requested a correction to a comment attributed to him (page 6, paragraph 4, sentence 1), which should specify Environmental Management Commission instead of Environmental Review Commission.

The motion to approve the minutes with the correction requested by Mr. Martin was made by Mr. Glass. Dr. Voiland seconded the motion, and it carried unanimously.

Reading of New Member's Economic Interest into Record

Mr. Hauser read the Evaluation of the Statement of Economic Interest for Mr. Tommy Anderson from the State Ethics Commission. Mr. Anderson will fill the role of a representative jointly nominated by the League of Municipalities and Association of County Commissioners on the Commission. He is a construction specialist with the City of Jacksonville, which among other duties addresses sedimentation and erosion control issues. As such, he has the potential for a conflict of interest and should exercise appropriate caution should the City of Jacksonville come before the Commission for official action. This would include recusing himself to the extent that this interest would influence or could reasonably appear to influence his actions.

ACTION ITEMS

North Carolina Department of Transportation Requests Delegation Authority to Administer Public-Private Partnership Projects -- Mr. Don Lee and Mr. Terry Gibson

Mr. Lee requested an expansion in the operation of the NCDOT delegation and projects covered. He discussed the organizational structure of NCDOT and their process in accomplishing work. The current delegation covers the Division of Highways, Turnpike Projects, Facilities Management (vertical construction), and the Rail Division. Aviation, Ports and Ferry Divisions are not currently covered under the delegation.

The SCC has delegated erosion and sedimentation control plan approval authority to NCDOT, which is administered by the Division of Highways (DOH). The delegation has expanded over the years to cover other projects (Rail, Turnpike, Facilities Management). LQS staff has worked with NCDOT to negotiate internal agreements between DOH and other divisions within NCDOT to utilize the delegation. NCDOT is seeking the opportunity to conduct Public-Private Partnership (P3) Projects within the various NCDOT divisions. NCDOT identifies three items of information to filter projects and determine whether they are included under the delegation: Right-of-way (ROW) ownership, financial responsibility, and operational control of the project.

Mr. Lee discussed the current program followed by DOT to satisfy the monitoring and inspection process of the delegated program (i.e. ICA, ICA EX, CICA). The goal is to modify the procedure to include a Temporary Suspension of Work, in the event of issues on the project site. The inclusion of P3 projects will require a modification of the monitoring process to include one additional step: Stop Work Order (SWO).

The request for expansion to include P3 projects will introduce private funding sources. Projects could be funded solely with private funds and would require consideration of ROW ownership, financial responsibility, and operational control of the project. There are more transportation needs in the state than available funding, so private funding opportunities are growing.

The concessionaires associated with P3 projects are accountable for the infrastructure. The partnerships involve a long-term lease agreement, and in some instances are responsible for operation/maintenance of the project for the duration of the lease. There are various configurations of the partnership agreements. Mr. Lee discussed several potential P3 projects and indicated traditional funding sources are not capable of handling the funding needs required.

Staff encouraged NCDOT to review operational practices and staffing, while considering the possibility of implementing the P3 projects. Additional practices are needed to ensure that the planning, design and construction of projects are able to go smoothly. The proposed program authorizes the Chief Engineer to issue a SWO in severe situations. The State Roadside Environmental Engineer would concurrently notify the

Director of DLR with written notice to request the SWO. The Chief Engineer would notify the appropriate Branch Manager of the suspension of work, and to discuss future recourse. Protocol and policy memos are in development, and will be prepared when authority is granted by the SCC.

Mr. Veltri asked whether NCDOT has eminent domain rights for ROW acquisition with P3 projects, and where does that become an issue with private funded construction. Mr. Gibson indicated there are many variations of P3 Projects, and they are dependent upon details of the concession agreement. An entity could approach NCDOT with property owned by the individual, build the project, and at some point turn the project over to the Department. The current P3s carried out by NCDOT involve NCDOT ownership of the ROW. He indicated NCDOT must have the contractual ability to address project issues that the concessionaire will not, which will be accomplished through agreements or by NCDOT ownership of ROW.

Mr. Veltri asked whether there would be cases where NCDOT will not have eminent domain rights for totally private projects. Mr. Gibson indicated there is a possibility of that scenario.

Mr. West asked whether there is a possibility of NCDOT leasing ROW to a private entity. Mr. Gibson indicated that is the approach on the Currituck Bridge project. NCDOT purchased the ROW and the private entity has the ability to operate/maintain within that corridor because they are leasing the property. NCDOT still has the right to take care of issues with the project, if there is a problem.

Dr. Voiland asked for clarification of NCDOT terms: concessionaire, private entity, and Turnpike Authority. Mr. Gibson provided the following explanation:

- Turnpike Authority is a public entity that operates under NCDOT and reports to the Chief Engineer (Terry Gibson) on the construction and design aspect of projects. The operational aspect of Turnpike (collecting tolls) reports to the Chief Operating Officer of NCDOT.
- The concessionaire is the group that will bring money to bear on the project of a private entity. It could be made up of any group of investors looking for a return on the investment.
- Private entity may or may not be the concessionaire. The private entity is usually rolled in with the concessionaire.

Ms. Smith asked if the concessionaire is the financially responsible party, and which entity is responsible for project issues. Mr. Nevils indicated DLR would hold both NCDOT (landowner) and the concessionaire with joint financial responsibility for the project.

Mr. West asked about accountability procedures for foreign investors. Mr. Gibson indicated the concessionaire would be held responsible. However, NCDOT (landowner) would address project issues and work with the concessionaire later. There are legal documents to hold a foreign entity accountable, but ultimately the ROW owner will

handle issues on P3s similar to any other project.

Ms. Smith asked whether there would be instances that NCDOT would not own the ROW. Mr. Gibson indicated it is difficult to say with P3s, but that is not currently the case. There may be future project opportunities involving NCDOT participation, but the NCDOT would not in the initial phases own the ROW. NCDOT would reserve the right, through agreements, to project access for addressing any failures that occur within the ROW.

Mr. Glass asked whether foreign entities are required to have a Registered Agent within the United States. Mr. Nevils indicated a Registered Agent is required by the Sediment Act.

Mr. Weintraub asked what procedures are in place to keep a private developer from being part of the same delegation program. Mr. Gibson indicated the P3s are for the larger (public good) projects and no consideration would be given to a developer type approach for this process. NCDOT has long range transportation plans which show connectivity in the vision local metropolitan and rural planning organizations have for the future. The P3s would need to be identified in the long range plan that the NCDOT could construct, which would be the larger projects and would preclude residential/developer scenarios.

Mr. Nevils indicated in some instances the developer is in operational and financial control of projects. The developer and NCDOT are held financially responsible for those projects, but those are submitted directly to LQS and are not part of the delegation.

Mr. Gibson indicated the NCDOT holds the delegated program in high regard and works to correct failures. It is the intent of NCDOT to handle the P3s, which are major transportation corridor projects, with the same stringent action to prevent violation of the sedimentation control laws. The goal is to establish the safeguards necessary to ensure all projects associated with the P3 program allow NCDOT to take action regardless of ownership. Considering the scale of NCDOT work, this will be a very small amount of the projects which are typically larger in size.

Ms. Smith asked about the alternative if delegation authority is not granted to administer P3 projects. Mr. Nevils indicated the projects would need to be submitted to DLR for plan approval and inspections. NCDOT would not have any enforcement authority.

Mr. Nevils expressed concern when approached by NCDOT to include P3s under the delegated authority. There was no system in place for NCDOT to be able to control the work of private entities. Staff held discussions with NCDOT to implement the practice of issuing SWOs, which will eliminate dealing with layers of NCDOT/private entity hierarchy.

Mr. Veltri asked whether delegated authority can be issued to any private entity. Mr.

Nevils indicated delegations are only authorized to public agencies, according to the Sediment Act. Mr. Veltri questioned who is financially responsible for the projects. Mr. Nevils indicated the Sediment Act allows DLR to hold the financially responsible person and/or the landowner accountable for the project. NCDOT would be held responsible as the ROW landowner, and the entity paying for the project would be financially responsible. The Division holds both parties responsible for the project. International situations would be handled by the Attorney General's Office.

Mr. Nevils indicated staff supports the delegation, based on the Proposed Program presented by NCDOT. There are enough checks to control the P3 projects.

Mr. Bivens discussed personal experience with the success of NCDOT Design Build projects. The level of enforcement on Turnpike projects has been in excess of standard NCDOT /private projects.

Ms. Deck asked whether the proposed program (implementing SWOs) requires action by the Commission or if it was meant to support the request for expansion of the delegation. Mr. Nevils indicated the SWO procedure was to get staff agreement to recommend approval of the expansion. The SWO procedure is expected to be followed by NCDOT. The delegation could be rescinded by the Commission for failure to follow the procedure outlined.

Mr. Glass asked if there are instances when NCDOT does not initially own the ROW, and whether the SCC has the ability to take concurrent jurisdiction on P3s. Mr. Nevils indicated the topic of projects involving ROW not owned by NCDOT would need to come back to the SCC for discussion, should such instances arise. Further assurances would need to be in place to ensure NCDOT could control the project. DLR does have concurrent jurisdiction over any delegated program (including NCDOT), and could take over the project if necessary. NCDOT has always taken the appropriate steps for compliance. The involvement of a private party would not affect the ability of DLR to maintain concurrent jurisdiction.

Mr. Weintraub asked whether DLR could invoke jurisdiction over P3s on a project basis. Mr. Nevils indicated it could take jurisdiction on a project basis or the entire delegated program could be rescinded. Mr. Allen added there is flexibility in the delegation process. If there is a problem program that decided not to respond to issues, there are actions the Commission could take to ensure compliance.

Mr. Anderson asked whether projects involving ROW owned by a private entity should be given further consideration, and included as a condition of agreement. Mr. Nevils indicated the Commission may wish to include those projects with private funding and ROW, until additional discussions are conducted on the topic. The proposed enforcement process may also be included as a condition of the delegation.

Mr. Veltri asked whether the private entity, involved with P3s, receives revenue from the projects. Mr. Nevils indicated revenue is received by the private entity.

Dr. Miller asked if NCDOT is requesting approval from the Commission for the SWO process. Mr. Nevils indicated the request is to add the P3 projects to the NCDOT delegation.

Mr. Bivens asked whether the NCDOT and DLR feel the SWO is vetted and may be added to the proposed program or if the process will be finalized. Mr. Nevils indicated discussions had been held with Mr. Lee to ensure the program would be implemented by NCDOT. Mr. Gibson indicated the program has been vetted, and will be implemented if approved. He added NCDOT does not have any P3s with privately owned ROW.

Ms. Smith called for a motion on the delegation authority request.

Dr. Voiland made a motion for the SCC to grant delegation authority to NCDOT to administer public-private partnership projects conditional on NCDOT owning the ROW and utilizing the SWO process as laid out before the Commission. The motion was seconded by Dr. Miller.

Mr. Allen requested for a clarification on the matter that NCDOT inform DLR of the financially responsible party.

Dr. Voiland modified his motion to include the clarification. Dr. Miller seconded the modified motion.

Mr. Veltri asked whether this process creates any precedent for other delegated authorities to include P3 projects. Mr. Allen indicated the SCC can only delegate the authority to administer the SPCA to local governments and other state entities. There are no other known state entities (outside NCDOT) that will do a substantial amount of land disturbing activity. Creating that precedent within NCDOT is not an issue.

Mr. Bivens mentioned there is no other entity (outside NCDOT) with the authority to conduct P3 projects. Legislation was passed issuing that authority.

Ms. Smith called for a vote on the proposed motion. The motion carried unanimously.

Resolution for Appreciation of Service of James D. Simons -- Ms. Robin K. Smith

Ms. Smith called for a vote on a Resolution for Appreciation of Service of James D. Simons (sent to the SCC members via email). The resolution for appreciation of service was read.

A motion to approve the resolution was made by Mr. Glass. The motion carried unanimously.

Ms. Smith presented the resolution to Mr. Simons. Mr. Simons thanked the

Commission.

Local Program Reviews -- Mr. Matthew Poling

Mr. Poling reported on the reviews of New Hanover County, Lincoln County, Guilford County, Catawba County, City of Greensboro, City of High Point, and the City of Greenville. A copy of the Local Program Report to the SCC is attached to the original minutes.

New Hanover County -- On February 23, 2012 Gray Hauser, Matt Poling and Dan Sams conducted a review of New Hanover County local program. The County conducted 231 total plan reviews in 2011, with 126 approvals and 105 disapprovals. The County has also conducted 1,810 inspections and issued 10 notices of violations and 10 civil penalties. The county has 2 full time equivalents (FTE) dedicated to erosion control. Four plans were reviewed and inspected. All sites were in compliance.

Recommendations were made by staff to improve the program. The local program should differentiate between comments and corrective actions on inspection reports, and enforce temporary stabilization on projects with inactive bare areas (basin slopes and diversions) to prevent erosion within the measures.

Staff recommends continued delegation of the program, with implementation of the above recommendations.

Mr. Martin made a motion for continued delegation, contingent upon staff recommendations. Mr. Veltri seconded the motion and it was approved unanimously.

City of Greensboro -- On March 1, 2012 Matt Poling and Tim Latham conducted a review of the City of Greensboro local program. The city conducted 211 plan reviews in 2011. The City also conducted 1066 inspections and issued six NOVs and no civil penalties. Five projects were reviewed and inspected. Three sites were in compliance and two had one or more violations.

Recommendations were made by staff to improve the program. The local program should emphasize stabilizing basin slopes and diversions to prevent erosion from occurring within the measures.

Staff recommends continued delegation of the program with implementation of the above recommendations.

Dr. McLaughlin made a motion for continued delegation. Mr. Anderson seconded the motion and it was approved unanimously.

Lincoln County -- On March 13, 2012 Matt Poling, Gray Hauser, James Moore, and Ryan Kormanik conducted a review of the Lincoln County local program. The County conducted 16 plan reviews during 2011, all of which were approved. The County

conducted 779 inspections, issued 14 NOVs, and issued 3 civil penalties. The County has 3 FTEs dedicated to erosion control. Five projects were inspected. Four of the projects were in compliance, with the fifth having significant violations that the County has been addressing.

The following recommendations were made by staff to improve the program:

- Inspection reports should be complete.
- Ensure the approved plan is followed at all times. Significant changes require a revised plan.
- Place more emphasis on providing adequate temporary or permanent ground cover in a timely manner.
- Emphasize the need for adequate water conveyance measures.

Staff recommends continued delegation of the program, with implementation of the above recommendations.

Ms. Deck questioned whether there is a need for follow-up in a few months with the local program. Mr. Poling indicated the recommendations are meant to help the program to grow and encouraging them to emphasize the new ground cover requirements.

Mr. Glass made a motion for continued delegation. Mr. Veltri seconded the motion and it was approved unanimously.

Catawba County -- On March 14, 2012 Matt Poling, Gray Hauser, James Moore, and Ryan Kormanik conducted a review of the Catawba County local program. There were 27 plans reviewed in 2011, with 25 approvals and 2 disapprovals. The County has also conducted 1165 inspections, issued 2 NOVs, and no civil penalties. Five plans were reviewed and four projects inspected.

Four of the projects had violations, which were not documented in recent reports. A letter was sent to Catawba County on March 20, 2012 with recommendations on improving the program. A follow-up review was conducted on April 30 and May 1, 2012 by Mr. Poling.

Recommendations were made by staff to improve the program. Three of the sites inspected on March 14 had significant violations. Previous inspection reports had not identified violations or asked for corrective actions. After receiving the Land Quality letter of March 20, the County did not write inspection reports for these sites. The sites did improve with the establishment of ground cover. The County is failing to enforce the provisions of its ordinance and the SPCA.

Staff recommends Catawba County be placed on probation. The County needs to improve the quality of plan review, site inspections, and take appropriate enforcement action for violations.

Mr. Nevils mentioned a Catawba County representative was present to answer questions of the Commission. Ms. Smith indicated the SCC would have an opportunity to question the representative after discussion by the members.

Mr. Anderson questioned whether the County wanted to continue the delegation. Mr. Poling indicated the County representative could provide a response to that question.

Dr. Voiland asked the number of FTEs dedicated to the local program. Mr. Poling indicated the program has three FTEs.

Ms. Deck questioned whether the program staff notified the local DWQ office of sites with offsite sedimentation to a stream. Mr. Poling indicated one site was reported to DWQ.

Mr. Glass asked whether there has been a history with this program. Mr. Hauser indicated the previous reviews have not shown any problems. Previously one project received a NOV with DWQ, but the 401 approval was modified to reflect the stream impact created.

Dr. McLaughlin questioned if the process, before rescinding a delegation, requires probation as a first step. Staff indicated probation is the first step.

Mr. Anderson asked for clarification from staff concerning inspections conducted by the County without documentation. Mr. Poling indicated recommendations for enforcement were made by Land Quality staff during the initial review, but follow-up inspections were not conducted by the County.

Ms. Smith called for a representative from Catawba County to speak to the Commission.

Ms. Toni Norton, Water Resources Engineer, indicated Catawba County wants continued delegation of the program. The County is in the process of implementing a new software program, and some project notes are not in the form of inspection reports. The County will make sure to prepare inspection reports each time a project is visited. Visits on the sites are intended to make progress with erosion control issues.

Mr. West asked if there has been an increase in the amount of work in the County. Ms. Norton indicated there has been a slight increase.

Ms. Smith asked if the County has three inspectors. Ms. Norton indicated there are three inspectors, but one has currently been called into active military duty.

Ms. Smith asked whether there is anything needed by Catawba County to be able to act on the conditions of the probation. Ms. Norton indicated she is aware of the conditions and is working with Mr. Poling to make improvements.

Mr. West asked about the recommended period of probation. Staff indicated a follow-up report is scheduled for the next SCC meeting (August 23). Mr. Martin asked whether Staff was able to follow-up with DWQ on his suggestion, given during the February 28 SCC meeting, regarding past issues with the County failing to enforce/comply with the Water Supply Watershed Rules and Catawba Basin Buffer Rules. Ms. Norton indicated the watershed regulations are in the Planning/Zoning Ordinance, which is not a part of the Erosion Control Ordinance.

Mr. Martin asked who conducts inspections for the buffer rules, if not the Sediment and Erosion Control Division. Ms. Norton indicated that may be the responsibility of the Planning Department.

Mr. West asked whether the Soil and Water District technician is involved in the inspection process. Mr. Martin indicated private developments were encroaching and building impervious surfaces within the buffers. The plans were approved by the County in violation of State Rules.

Mr. Hauser indicated Staff has not contacted DWQ, but will do so prior to the next SCC meeting (August 23).

Ms. Smith indicated the County should be aware of the Water Supply Watershed and Catawba Buffer Rules because it is a part of the plan review process. Mr. West indicated the County could contact the Soil and Water technician, which is usually involved in a review committee for stream bank work.

Mr. Weintraub made a motion to place Catawba County on probation until a follow-up report is presented at the August 23 SCC meeting. Mr. Bivens seconded the motion and it was approved unanimously..

City of High Point -- On March 21, 2012 Matt Poling and Chuck Kirchner conducted a review of the City of High Point local program. The City reviewed 41 plans, with 40 approvals and 38 disapprovals. The City has conducted 450 inspections, issued 12 NOVs, issued one civil penalty, and one stop work order. The City contributes 2.5 FTEs to erosion and sediment control. Five projects were reviewed and inspected. All five sites had one or more violations.

The following recommendations were made by staff to improve the program:

- Inspection reports should always be completed when violations are identified.
- Paperwork not stored electronically should be organized chronologically and pinned into a folder.
- Continue to require adequate ground cover to be provided within the time limits of the ordinance and approved plan.
- Continue to check for self-inspection records.

Staff recommends continued delegation of the program, with implementation of the above recommendations.

Mr. Martin asked for an explanation of the numbers submitted for plan reviews, approvals, and disapprovals. Mr. Poling indicated the disapprovals refer to plans disapproved during the first review process. Mr. Hauser indicated the information is self-reported by the local programs.

Mr. Martin pointed out there should be a consistent reporting method. Ms. Smith indicated staff should email the local programs to clarify the reporting method for future submittals.

Ms. Smith indicated there seems to be an issue with documenting inspections. Mr. Poling added many of the programs are transitioning to electronic systems, and it is difficult for staff to track whether reports are written.

Mr. Nevils mentioned many of the programs have traditionally not written inspection reports, thinking frequent visits and verbal discussions with contractors were sufficient. Staff has worked with the programs to transition them toward written reports documenting the needs of the site. There are still some programs that do not write reports as necessary.

Ms. Smith indicated the issue is discussed at the local program workshops, and also outlined in the Memorandum of Understanding (MOU). Mr. Nevils indicated the local programs are being encouraged to complete the MOUs to ensure they are aware of requirements for documenting.

Ms. Smith called for a motion on staff recommendation to continue delegation to the City of High Point. Ms. Deck made a motion for continued delegation, which was seconded by Dr. Voiland and it was approved unanimously.

Guilford County -- On March 22, 2012 Matt Poling and Tim Latham conducted a review of the Guilford County local program. The County reviewed 30 plans, with 21 approvals, and 16 disapprovals. The County conducted 1880 inspections, issued two NOVs and no civil penalties. Five plans were reviewed and inspected. The County contributes 2 FTEs to erosion and sediment control. Three of the five sites were in compliance.

The following recommendations were made by staff to improve the program:

- Require adequate ground cover to be provided within the time limits of the approved plan.
- Continue to check for self-inspection records.

Staff recommends continued delegation of the program, with implementation of the above recommendations.

Mr. Martin made a motion for continued delegation, contingent upon staff recommendations. The motion was seconded by Mr. Veltri and carried unanimously.

City of Greenville -- On April 23 and 24, 2012 Matt Poling and Mell Nevils conducted a review of the City of Greenville local program. Five projects were inspected on April 23, including three inspected during the February 9 review. The second day of the review included time spent with the City staff reviewing plans, drafting NOVs, and going over enforcement procedures. The five sites had one or more violations.

The following recommendations were made by staff to improve the program:

- The City staff should work with Washington Regional Office (WARO) for additional training in E&SC inspection techniques.
- The City staff should work with WARO and the Raleigh Central Office for training on when to take enforcement actions.
- The City should establish procedures for carrying out enforcement actions when needed.
- Continue to check for self-inspection records.

Staff indicated additional time was needed to ensure improvement in project management and implementation of the SPCA. Staff recommends extending the probationary period for the City of Greenville until the August 23 SCC meeting.

Mr. Martin asked for clarification whether the recommended continuation was due to the number of projects available to review and not due to any defect with City staff. Mr. Poling indicated some of the projects are still out of compliance from the previous review, but the CITY has been working toward enforcement and needed help to implement enforcement procedures.

Mr. Martin asked whether the City had failed to prepare proper documentation for the non-compliant sites. Mr. Nevils indicated there were several sites which the City had not done things to get the site into compliance, but they are working to improve.

Ms. Smith called for a representative from the City of Greenville to speak to the Commission.

Mr. Godefroy, interim Public Works Director, indicated the City has made improvements toward getting the program back on track. There are several projects where the owner/contractor is the same entity, and have posed challenges to gaining compliance. The City has made progress and hopes to gain compliance shortly.

Ms. Deck asked about procedures the City is using to improve enforcement. Mr. Godefroy indicated inspections have increased, and more frequent follow-up with owners/designers regarding issues to address.

Ms. Smith called for a motion on staff recommendation to extend probation for the City of Greenville. Mr. West made a motion for extending probation, which was seconded by Dr. Miller and it was approved unanimously.

Memorandum of Agreements with Local Programs -- Mr. Gray Hauser

Mr. Hauser gave a brief discussion of the Memorandum of Agreement (MOA), approved by the SCC, to be adopted by each local program. Two MOAs were presented to the SCC for approval: New Hanover County and Iredell County.

New Hanover County -- Mr. Martin indicated the County failed to complete the form and did not identify the parties signing the document. The form needs to be re-done, or completed by staff and initialed by the County.

Mr. West asked whether it could be approved pending receipt of a corrected document. Mr. Allen indicated it could be approved pending receipt of the new document.

Ms. Smith called for a motion to approve the New Hanover MOA as it will be corrected to reflect the county name.

Mr. Martin added the signatures provided do not include titles for identification. Mr. Allen indicated the titles are necessary to ensure the individual has the authority to bind the County, but the MOA will not be enforced. The MOA could be approved as amended and request the County to initial the changes, which does not change the substance of the agreement.

Mr. West added the document is not dated. Mr. Allen indicated the date of the agreement is the day on which the last required signature is added to the document. Mr. West indicated there should be some consistency in completion of the MOAs.

Mr. Martin made a motion to approve New Hanover County MOA with the understanding that the proper terms (for the local government and the entities signing) will be inserted into the document along with their initials, or a new form will be completed prior to signatures from the Department/SCC. Mr. West seconded the motion and carried unanimously.

Mr. Weintraub asked whether local program ordinances are evaluated, during DLR reviews, to determine if it has been updated to reflect the new requirements of the General Stormwater Permit. Mr. Hauser indicated the reviews do include an ordinance review.

Ms. Smith asked whether ordinances have been reviewed for both Iredell and New Hanover County. Mr. Hauser indicated the ordinances have been reviewed. Ms. Smith asked if the Regional Offices are involved in conducting ordinance reviews. Mr. Hauser indicated the reviews are performed by the Central Office staff.

Iredell County -- Ms. Smith asked for questions on the Iredell County MOA. There being no questions on the MOA, she called for a motion to approve.

Mr. West made a motion to approve the Iredell County MOA. The motion was seconded by Mr. Glass and carried unanimously.

Dr. McLaughlin asked whether there is any training for the delegated program staff outside of the local program workshop, considering there are no SCC requirements for certification. Mr. Hauser indicated informal training is conducted through the regional offices dealing with problem sites and SPCA questions, in addition to the SCC funded annual local program workshop. He added the delegated programs fund additional training for staff to attend NCSU sessions and the DLR Design Workshops. During previous years, scholarship funds were available for local program staff interested in attending training sessions.

Dr. McLaughlin asked whether there needs to be more formalized training for the local programs than is currently available. Mr. Hauser indicated DLR has not made an effort to require a mandatory certification.

Ms. Smith indicated there was a previous attempt to develop a certification requirement to participate in the delegated process, but it did not move forward. Mr. Nevils indicated that would need to be passed by the Legislature.

Proposed Education Projects

Ms. Jacobs discussed the results of the Training Needs Assessment Survey conducted by the Center for Urban Affairs and Community Services (CUACS). The Sedimentation Education Committee (SEC) recommends addressing concerns revealed through the survey, such as workshop duration, in the upcoming fiscal year. The anticipated funds for the Education Program are estimated to be \$135,000.

Ms. Jacobs discussed the specifics for each of the contract proposals, which were approved by the SEC and recommended to the Commission.

1. Sediments Newsletter	\$17,020
2. Local Program Workshop	\$69,869
3. Five Design Workshops	<u>\$33,374</u>
	\$120,263

Ms. Smith called for a motion to accept the budget, based on obtaining funding. Ms. Deck made the motion to approve the budget, which was seconded by Mr. Veltri.

Drs. Voiland and McLaughlin recused themselves from voting on the proposed education projects.

There being no discussion on the motion, Ms. Smith called for a vote. The motion carried unanimously.

INFORMATION ITEMS:

Report on Local Program Assistance by Regional Offices -- Mr. Gray Hauser Report on Regional Office Contacts with Watauga County, the Town of Boone, and the City of Wilson. A copy of this report is attached to the original minutes.

Watauga County

Matthew Gantt and Tim Latham of the Winston-Salem Regional Office reviewed the Watauga County local program on February 23, 2012. The program had 25 projects on file, 15 of which were active sites. Seven plans were reviewed, and five were adequate. Staff helped to review two new plans. Four of the projects were inspected, and two were in compliance. Two projects were in violation for ground cover. DLR staff noted the County has greatly improved.

Town of Boone

Matthew Gantt and Tim Latham of the Winston-Salem Regional Office reviewed the Town of Boone local program on February 22, 2012. The Town had six active sites, and five were inspected during the review. Four sites were in compliance, and the fifth lacked an adequate construction entrance. DLR staff noted the Town is managing the program efficiently.

City of Wilson

Karyn Pageau and Joe Dupree of the Raleigh Regional Office reviewed the City of Wilson local program on January 10, 2012. The City had five active sites, and three were inspected during the review. Two sites were in compliance, and the third was missing a check dam that was installed the next day. DLR staff noted the City is well run with trained staff that frequently inspects its sites.

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 thanked Mr. Simons for his service to DLR.

Mr. Allen mentioned the Applewood Case which involves an interpretation of the SPCA by a panel of the Court of Appeals. The State has filed an amicus brief contesting the panel's interpretation of the SPCA. The panel interpreted the SPCA to mean a violation occurs only if there is in stream sedimentation. The ruling by the Court of Appeals has been appealed to the State Supreme Court.

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.

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 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 staff for their efforts. He mentioned a proposed budget has been released from the House, which includes cutting eight additional positions from the Erosion and Sediment Control Program. The request was based on the decrease in numbers of inspections, new acres disturbed and new plans. DLR submitted information for review on the total number of active projects, some of which are idle but still require inspections. The hope is to counter the request and avoid losing additional staff.

Mr. Nevils expressed thanks to Mr. Simons.

Mr. Glass asked whether the proposed Legislative cuts would come from vacancies. Mr. Nevils indicated they would not be taken from vacant positions.

Mr. Glass indicated the Professional Engineers of North Carolina (PENC) provided information to dispute the proposed budget cuts, in favor of DLR.

CONCLUSION

Remarks by the Director -- Mr. Simons discussed the progression of the Erosion and Sedimentation Control Program. He also encouraged the group to continue their efforts, and thanked the staff.

Remarks by the Commission Members -- Dr. Voiland mentioned his retirement in December 2012. A list of candidates has been selected for interviews. The replacement is expected to begin work and overlap with him in an opportunity to gain knowledge related to the position.

Remarks by the Chair -- Ms. Smith expressed appreciation to Mr. Simons for all his efforts.

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

Stephanie Lane, Recording Secretary

Tracy E. Davis, Director