

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
February 17, 2011
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on February 17, 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
Mr. Tommy Esqueda
Dr. Michael Voiland
Ms. Elaine Chiosso
Mr. Ricky Vick
Dr. Rich McLaughlin
Mr. Kevin Martin
Mr. Randy Veltri

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. Gowon Goode, Assistant State Sedimentation Specialist, Land Quality Section
Ms. Evangelyn L. Jacobs, Sedimentation Education Specialist, Land Quality Section
Mr. John Holley, Land Quality Section
Ms. Melanie McCaleb, NCSU
Mr. Rufus Allen, AG's Office
Mr. John Payne, AG's Office
Mr. David Harris, NC Department of Transportation
Mr. Don Lee, NC Department of Transportation
Mr. Steve Dewitt, NC Department of Transportation
Mr. Kirk Stafford, Town of Cary
Mr. Jay Stem, NCAA
Ms. Jean Spooner, NCSU
Mr. Brian Wrenn, DWQ
Ms. Amy Chapman, DWQ
Mr. Ian McMillan, DWQ

PRELIMINARY MATTERS

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

Mr. Esqueda recused himself from Action Item A, Local Program Review, pertaining to the Town of Apex delegated program.

Those in attendance introduced themselves.

Ms. Smith called for approval of the minutes for the November 30, 2010 meeting. Mr. Glass noted a typographical error at the top of page three. The minutes should state "The sites were evaluated for the adequacy of plans, effective measures and groundcover." A second typographical error was noted at the bottom of page four. The minutes should state "Staff recommended continuation of the delegation of the program."

The motion to approve the minutes with the corrections was made by Ms. Chiosso. Dr. Voiland seconded the motion, and it carried unanimously.

ACTION ITEMS

Local Program Reviews - Mr. Gowon Goode

Mr. Goode reported on the reviews of the Town of Apex and the Town of Southern Pines. A copy of the Local Program Report to the SCC is attached to the original minutes.

Town of Apex

The Town of Apex Local Program was reviewed December 21, 2010. Currently a staff of three provides 0.75 full-time equivalents to sediment and erosion control. The full-time position is vacant, due to retirement. Staff recommended filling the full-time position and continued delegation of the program.

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

Town of Southern Pines

The Town of Southern Pines Local Program was reviewed December 22, 2010. Staff recommended continued delegation of the program. Mr. Vick made a motion for continued delegation of the program, which was seconded by Ms. Chiosso and carried unanimously.

Request from Idaho DOT for Risk Assessment - Mr. Mell Nevils

Mr. Nevils discussed a request received from the Idaho DOT to utilize the SCC Risk Assessment.

The SCC in 1997 tried to develop a procedure for assessing the risk of a site for erosion and sediment control, when evaluating sites for potential development. Several years were spent testing the process. The development group was satisfied with the risk component of the process; however, the mitigation side posed problems. Three regional offices used the Risk Assessment process briefly on plans. The process was later revised and utilized at one of the Spring Design Workshops to allow participants to conduct a Risk Assessment. The results were compared in order to determine whether consistent results could be achieved. Issues with the mitigation side were never resolved.

Idaho DOT is looking into developing a similar program, and wants to use the SCC data/information as a starting point. Mr. Nevils presented the request to the SCC for consideration. He indicated similar requests have been made and granted, as long as, credit is given to the SCC for development.

Ms. Chiosso requested copies of the information for review. Chairman Smith questioned whether others would like access to the information, and requested submittal by Mr. Nevils prior to the next SCC meeting.

Mr. Martin indicated it should be made clear to Idaho that the information was not completed and is still in a draft form. Mr. Glass indicated Idaho should share with the SCC their efforts, as a learning process.

Request to Use Unspent Sedimentation Education Funds - Mr. Mell Nevils

Mr. Nevils submitted a request to the SCC to use unspent sedimentation education funds for operation of the Land Quality Section.

Mr. Martin questioned whether anything prohibits using funding for uses other than education. Mr. Allen indicated there is nothing to prohibit such an action.

Mr. Martin made a motion to use unspent sedimentation education funds, which was seconded by Mr. McLaughlin and carried unanimously.

INFORMATION ITEMS:

Update on Western Wake Expressway-- Mr. Steve DeWitt, Chief Engineer of NC Turnpike Authority, discussed the Triangle Expressway.

Mr. DeWitt discussed the history of the Turnpike Authority, which was originally a separate agency from NCDOT. The Legislature felt separation of the two agencies was important. The General Assembly in 2009 brought the Turnpike Authority under NCDOT.

The Triangle Expressway began in August 2009. It is being constructed extremely rapidly, and has not had any erosion control issues. Western Wake Freeway is going well, but had an issue last year with groundcover. The project was stopped for two weeks last summer as the personnel went through a learning curve to understand erosion control requirements. Mr. DeWitt indicated things on the site are well under control, at this point.

Dr. McLaughlin questioned the amount spent on the two projects for sediment and erosion control. Mr. DeWitt did not have that information available, but indicated it could be provided. The projects are lump sum contracts, and much effort is made for erosion control.

Duties of Commission Members-- Mr. Allen provided an update on duties of the Commission members.

Mr. Allen discussed NC Statutes for the Administrative Procedure Act, Open Meetings Law, and the Public Records Law.

Mr. McLaughlin questioned whether disposition of records at the end of the term of an official is required. Mr. Allen indicated some of the rules are written in reference to paper, where there is only one sheet of paper in existence, and that is how the record exists. The Commission member is expected to transfer those to the custodian of records at the end of the term.

Mr. Glass questioned the process of updating the ethics statement every two years. Mr. Allen stated there has been a change to that this year. Mr. Nevils indicated there have been two changes implemented. First, a new method is available to fill out the ethics form (not requiring notarization), and it must be completed each year for submission by April 15. Also, there is a training requirement every two years. Training must be conducted within six months of appointment, and every two years, thereafter, while serving on the Commission.

Mr. Allen indicated questions regarding ethical issues should be addressed to Mr. Nevils or himself and they will forward questions to the Ethics Commission. Mr. Nevils stated civil penalties can be assessed to those who do not update the ethics statement by the April 15 deadline.

Mr. Glass questioned whether there is a reminder for completing the ethics statement. Mr. Nevils indicated a letter is sent by the Ethics Commission as a reminder, and a follow-up call is made by himself to the individual.

Ms. Chiosso indicated that the May 2011 SCC meeting will be last of her second term, and questioned whether service continues until someone is appointed. Mr. Allen indicated service is continued until a replacement takes the oath to serve on the Commission.

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 reviewed the enforcement report. There are six CPAs being drafted in the Attorney General's Office, which indicates some development is taking place. There are 52 cases pending in OAH, slightly less than last report. Many violators are not getting attorneys, which cause the cases to move slowly. Eight cases are pending in Judicial Review, which is higher than normal. Injunctions are maintaining at ten. Cases where CPAs are being paid by installment have declined slightly. The installments have been successful in allowing time for people to pay. The payments received totaled about \$70,000.

Land Quality Section Active Sediment Cases Report-- Mr. Goode presented the status of Civil Penalty Assessments. A copy of this report is attached to the original minutes.

NCDOT Report -- Mr. Goode presented a report on Immediate Corrective Actions issued by NCDOT. Three projects were issued ICAs, between November 2010 and February 2011, which have now achieved compliance.

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.

Mr. Glass questioned whether PDH credits are available for the workshops. Ms. Jacobs indicated 12 PDH credits are issued for the workshops.

Mr. Glass suggested contacting Commission members, within designated regions, to attend educational presentations.

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 announced that Gowon Goode submitted a letter of resignation, effective February 25, 2011. As a result, there is not a person available to conduct Local Program inspections on a routine basis; the position has been frozen. Local Programs with problems will be handled by Mr. Hauser and Mr. Nevils. Mr. Nevils thanked the staff for their hard work.

Mr. Glass asked how many local program reviews would be done before the SCC meeting in May 2011. Mr. Hauser indicated follow-up reviews will be made in Jackson County and Watauga County. Approximately 2-6 reviews will be performed, prior to May. Mr. Nevils volunteered to provide assistance to conduct reviews, when available.

Mr. Nevils explained the Regional Offices will be conducting informal reviews, and problems will be referred to the Central Office, which necessitate a formal review.

CONCLUSION

Remarks by the Director -- Mr. Simons thanked Ms. Smith for her efforts. The Secretary did recommend to the Governor an increase in the erosion control plan review fee. There is a potential bill for tiered enforcement, which is a current practice by Land Quality. Changes to the trout buffer have been requested.

Remarks by the Commission Members -- Mr. Glass questioned updates from the subcommittee evaluating the report from the Conservation Council. Mr. Nevils indicated a subcommittee was not formed, but some of the items were forwarded the TAC to address.

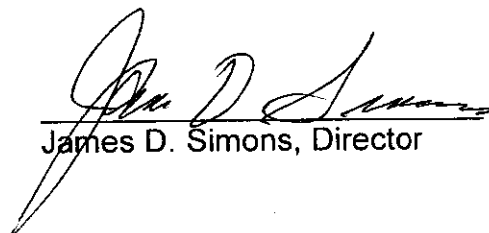
Remarks by the Chair -- Ms. Smith thanked Mr. Goode for his service. She asked about the status of the Memo of Understanding (MOU) between DLR and the Local Programs. Mr. Nevils indicated all Local Programs will be asked to submit an MOU, upon re-delegation. A draft of the MOU is being prepared.

Ms. Smith questioned the status of the MOU between DLR and DWQ. Mr. Nevils indicated discussions are taking place to get that document prepared.

Ms. Smith discussed nominations for a SCC Vice Chair. Dr. Voiland volunteered to serve as Vice Chair, if there is no conflict with his position as an ex-officio member.

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


Stephanie Lane, Recording Secretary


James D. Simons, Director