



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

**North Carolina Board of Transportation
Environmental Planning and Policy Committee
Meeting Minutes for February 4, 2009**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held February 4, 2009 at 8:30 AM in the Board Room (Room 150) of the Transportation Building. Nina Szlosberg chaired the meeting. Other Board of Transportation members that attended were:

Mac Campbell	Bob Collier	Nina Szlosberg
Arnold Lakey	Tony Dennis	Marion Cowell
Andrew Perkins	Doug Galyon	Gus Tulloss
Conrad Burrell		

Other attendees included:

Julie Hunkins	Angela J. Person	Greg Thorpe
Joel Setzer	Jay Swain	M. L. Holder
M. A. Pettyjohn	Rich Gannon	Alan Clark
Mike Mills	Tim Johnson	Berry Jenkins
Daniel Keel	Don Voelker	Amy Simes
Don Lee	Ken Pace	Bob Andrews
Tom Norman	Bill Gilmore	Tad Boggs
Jerry Jennings	Allen Pope	Phil Harris
Wally Bowman	Greg Burns	Susan Coward
Jennifer Garifo	Mat Lauffer	Andy McDaniel
Marie Sutton	Eric Midkiff	Donnie Brew
Phillip Ayscue	Dan Thomas	

Ms. Szlosberg called the meeting to order at 8:35 AM and accepted a motion to approve the meeting minutes from the January committee meeting as presented. The minutes were approved.

Ms. Szlosberg began the meeting by introducing Greg Thorpe, Manager of the Project Development and Environmental Analysis Branch (PDEA). Ms. Szlosberg also welcomed Alan Clark from the NC Department of Environment and Natural Resources' Division of

Water Quality (DWQ) and invited him to make any comments that he would like to share with the Board.

Mr. Thorpe started by reminding the Board that the Environmental Management Commission (EMC) adopted the Jordan Lake Rules in May of 2008. On June 19, 2008 the Rules Review Commission (RRC) reviewed those rules and sent them back to the Environmental Management Commission for further consideration. The EMC and the RRC looked at the rules a couple of times. The EMC and the Department of Environment and Natural Resources (DENR) did make some changes to the rules, which at that time were thought to be very positive. At this point in time, NCDOT no longer had any objections to the rule affecting new development of either roadways or any other type of facilities. There were very good changes made to that portion of the rules. On November 20, 2008, the Rules Review Commission adopted those changes and others and sent the entire package to the General Assembly for their consideration.

There are aspects of the rules, however, that NCDOT staff believes are problematic. In particular, the rule affecting existing development continues to be troubling. It currently requires the removal of 500 pounds of nitrogen from the facility over a five-year period, with a minimum of 50 pounds in any given year. They believe that still adds a proportion to their estimated contribution of one to two percent of the problem. They think it still will require too many retrofits and too many stormwater facilities in order to get that kind of removal from NCDOT's load in the system.

Some of the other areas that was found troubling was a section in the rules that would allow the EMC to adopt alternative stream mapping systems without going through rulemaking. NCDOT staff believes that changes to how the streams are mapped should go through the rulemaking process because when you change how the streams are being mapped, you change the regulated area that the rules apply to. There is also language in the rule that refers to activities outside the buffer and what kind of impact it would have on the buffer. They think it is problematic for NCDOT's facilities. There is still language about the buffer zone itself and they think that language is problematic and encourages placement of those facilities in the buffer, which would likely be subject to flooding.

As the rule stands right now, a bill has been introduced into the General Assembly objecting to the rules. Since that bill has been introduced, within 30 days of the session, the General Assembly will have to either take action on that bill or not do anything. If they don't do anything, then the rules will become effective as they now stand. The General Assembly could enact a rule that will approve the rules as they stand or approve some of the rules and object to others, or they could disapprove the entire package. They could also send the package to what is called the "6 of 5" process, where they send the package over to the legislative staff in order for them to go through a process to try to develop changes to the rules and then send them back to the General Assembly. They are not sure what will happen at this point. They did have another meeting with DWQ to discuss ongoing concerns with the rules, which turned out to be very positive. They plan to meet again to come to further agreements on changes to take back to DENR and the General Assembly. Something will have to happen during this session with the General Assembly pertaining to the rules.

Ms. Szlosberg asked if the bill requires the removal of 500 pounds or a minimum of 50 pounds per year?

Mr. Thorpe answered that the rules as they were approved by the RRC requires 500 pounds over a five-year period or a minimum of 50 pounds.

Ms. Szlosberg asked what NCDOT's percentage was of the total load?

Mr. Rich Gannon from DWA answered that based on the export rate that the DOT staff developed through research, with the total reduction it would be about 10,000 pounds, and at the rate of 100 pounds per year, it would take 100 years to achieve the entire reduction.

Ms. Szlosberg asked if you wanted to achieve the 10,000-pound reduction, would NCDOT's current structure need to remove 500?

Mr. Gannon answered, "500 pounds over a period over five years for each five-year period in the future."

Ms. Szlosberg asked, "Does the 10,000 pounds represent ten years?"

Mr. Gannon answered, "10,000 pounds would be 100 years. On an average 500 pounds over five years would be an average of 100 pounds a year, so it would take 100 years to reach 10,000 pound reduction."

Ms. Szlosberg stated that the NCDOT believes that they are achieving one to two percent reduction. With 500 pounds, what does that represent -- what is the difference in what DWQ believes we need to produce in the way of reductions and what NCDOT believes?

Mr. Gannon stated that they do not have final numbers. The development of the accounting specifics would be part of the implementation that is set out in the rule, so the accounting method would be set out in the first couple of years and then they would nail down the specific rates.

Mr. Thorpe stated that he had not heard the 10,000 pound figure before and NCDOT would take a look at that. When they do go out to widen an existing road, they do provide some level of stormwater treatment depending on what is physically feasible to do in that area. They may provide grass swells or other types of velocity controls. As a result, they are getting some level of reduction.

Ms. Szlosberg asked, "How far are is SWQ and NCDOT apart? When trying to come to an agreement it is helpful to know how wide the divide is. Have you identified that?"

Mr. Thorpe answered, "The divide is probably wider in regards to cost and just fundamental philosophy about what NCDOT's responsibility is for removing nutrients that are coming into the system."

Mr. Gannon added that they do not have a clear process on nailing down the final numbers at this stage, but they will need it for the Legislative process.

Mr. Perkins asked, “Why do we not have a comparison for the legislative process now? We have been talking about this for two years now, and we all know that we have an inordinate impact financially to correct if we do this. We should at least have some idea what that number is.”

Mr. Thorpe stated that part of the issue arises because they are relying on data that researchers have collected. NCDOT has funded the research. DWQ is relying on a much broader database.

Mr. Gannon added that is not as if they do not have any idea. They do have numbers, and the previous accounting that they relied on primarily would compare the export rate developed by NCDOT (that was 3.2 pounds per acre per year coming off roadways) to the eight pounds per acre; that is a relevant comparison. If the entire reduction need estimated by NCDOT staff is about 10,000 pounds per year, DWQ’s would be about 2 ½ times that amount.

Mr. Perkins asked, “How much of that is being developed from the already previously developed areas that have impact on our system into Lake Jordan? Why aren’t we looking at having them pay the cost?”

Ms. Szlosberg answered that there is no real way to capture the cost from developers, which is the issue.

Mr. Gannon answered, “DOT right of way isn’t being asked to achieve reductions from the run-off from other developed areas. The land has been developed privately and is subject to another rule within the package, and local government certainly isn’t fast to finding ways to get reductions.”

Mr. Lauffer from NCDOT’s Hydraulics Unit stated that the section of the rules that NCDOT is concerned about is the 500 pounds. NCDOT knows what their export rates are and they know that the implementation needed to get those reductions are very expensive. NCDOT wants to be responsible for runoff that comes off their right of way, but they are responsible for run off that comes onto their right of way. When you look at the export rate of 3.2 pounds per acre per year, then your average drainage area is somewhere around two to seven acres, and then you factor into that the efficiency of devices. Initial calculations are that we are talking around 55 retrofits per year, which is a significant cost over a five-year period, which comes out to be just construction alone around \$21 million dollars a project. They look at how to address the load in a situation. The two agencies have had good staff interaction and discussion on this, and NCDOT is not opposed to treating NCDOT right of way or prioritizing where we put those best management practices so that we get the most efficient reduction in nitrogen and nutrient loading.

Mr. Thorpe stated that they are not contesting 10,000 pounds. They think that is a reasonable number and was based on NCDOT-funded research through the UNC system. NCDOT never

takes a sample or analyzes a sample, and the research is all done independently through the University community. What it does show is that the nutrient concentration in NCDOT's run-off are low, and that intuitively makes sense because NCDOT is not fertilizing the right of way. The issue is that when you have a fixed removal rate which has to meet the proposed 500 pound reduction over a five-year period, and your trying to move a very small level of nutrient load, it takes a whole lot of stormwater Best Management Practices to add up to 500 pounds when you remove only a small fraction with each stormwater facility. The 10,000 pounds sounds like a big figure, but it's still two percent less.

Mr. Clark added that NCDOT's approach in regards to working with staff is to try and achieve the reduction within the right of way and corridors of land that NCDOT controls. On the other hand, DENR is thinking that there are other opportunities to go off-site to use other mechanisms to achieve that reduction which would be much more efficient. He pointed out that where highways are going through wetlands, there are expectations to achieve mitigation within the highway right of way. However, like the Ecosystem Enhancement Program, an approach could be used here so a much smaller amount of money could be used for those reductions instead of trying to do it all with right of way.

Mr. Thorpe added that the complications arise when you are capturing runoff from other facilities and trying to claim credit from those facilities. It is not just a matter of doing the accounting. There is no way to control what may happen to the areas that your are capturing that run-off from in the future. It could be additional development so you end up having higher flow to those facilities. There are a lot of accounting questions that haven't been answered.

Ms. Szlosberg stated that this is just another example of how complicated all this is. She encouraged them to continue the dialogue between the agencies in hopes of doing the right thing for the environment and the transportation system.

She mentioned that the last time the EPPC met, they talked about their accomplishments as a group in terms of environmental policy and they put together a list. She put a report together talking about the opportunities identified for future discussions and a snapshot of their accomplishments as a committee and shared that with Secretary Conti and Governor Perdue. She wanted them to have a concrete example of the kinds of work they have been engaged in. She provided copies of this to the EPPC.

Ms. Szlosberg introduced Bill Gilmore, from the Ecosystem Enhancement Program (EEP), who showed a video about Eco-Farming, which featured North Carolina's EEP. The video, which targets an audience 13-15 year in age, showed the process of wetland and stream mitigation and featured some of the projects that they are doing for the State. EEP was contacted in March of 2008 by Aqua-Kids, which is a nationally syndicated educational television program. It is in all 50 states and has about 100 million viewers. They look at things dealing with the environment. Aqua-Kids have received many national recognition awards. Some of the EEP staff were the actors, and others were recruited from around the United States from high schools. Mr. Gilmore thanked Tad Boggs for helping to facilitate the logistics for the filming and getting people around when people arrived from Baltimore. To

view the Aqua Kids: Eco-Farming video, visit
http://www.nceep.net/Video_files/videostream.htm

Ms. Szlosberg thanked Mr. Gilmore and adjourned the meeting.

The next meeting of the Environmental Planning and Policy Committee is scheduled for Wednesday, March 4, 2009 at 8:30 AM in the Board Room (Room 150) of the Transportation Building.

AJP/jh