

South Carolina Mitigation Association

Membership Quarterly Meeting

December 9, 2020 | 10:00 AM

Zoom Meeting

I. Opening

Allen Conger welcomed everyone to the meeting. He noted that 2020 has been a busy year. The Executive Committee has met monthly and produced a number of responses to public notices including the Nationwide Permit Program and the SCDOT's In Lieu Fee in the Catawba Watershed. These communications and others will be posted to the public area of the website.

Mr. Conger introduced the first speakers from DHEC, Chris Stout, Manager, Coastal Zone Consistency Section, and Chuck Hightower, Manager, 401 Water Quality Certification Section.

II. Mitigation Policies and Requirements, 401 Water Quality and Wetland Bank Applications, South Carolina Department of Environmental Control

- Mr. Stout, Manager, Coastal Zone Consistency (CZC) Section, has a BS in Marine Science and worked on a Master's degree with an emphasis on freshwater wetlands and mapping. He began with the OCRM in 2008.
- Mr. Stout provided a review of the Coastal Zone Program, which began in 1972. He noted they look at state and federal permits and federal activities and any funding in the areas. They can also request to look at projects up to three miles offshore that have potential impact.
- The goal of CZC is to provide a framework and an avenue for responsible development and to ensure the resources are protected now and for future generations.
- The goal of the Wetlands Master Planning is to take a holistic look at the entire project looking to future build-outs as well. Mr. Stout pointed out that it is important to note that there are only a few instances where CZC polices actually address specific types of wetland; they generally look at all wetlands and Waters of the US, as well as Waters of the State.
- Mr. Hightower then reviewed the 401 Certification Process. He pointed out that the 404 Permits with the US Army Corp of Engineers cannot be issued unless the 401 Certification has been waived.
- They have a joint process with the Corps and coordinate closely with the OCRM.
- Mr. Hightower reviewed the regulations, including the reasons certification may be denied. Mitigation is not mentioned in the 401 Certification regulations; however, cumulative impacts listed in the regulations name "cumulative impacts of the applicant and others." This is where mitigation enters the process. They also have to comply with the SCDHEC Regulation 61-68, Water Quality Classifications and Standards, which includes anti-degradation policies.
- Their mitigation requirements do not typically deviate from the Corps' policies. The 401 Certification is directly tied to the 404 Permit. They do not have any regulatory or permitting authority over non-jurisdictional wetlands. However, the Corps has proposed early reauthorization of Nationwide Permits and they have been asked to certify those that are proposed. This is different than what has been done in the past, which was certifying the

final, not the proposed. The DHEC-OCRM has decided to maintain their own standards and approach; maintaining linear foot limits for certain Nationwide Permits. In the future, we may see the Corps issue their 404 under the Nationwide General Permit, which may exceed the DHEC linear footage limits. In that case, there will need to be an Individual 401 Certification to meet the condition. There may be times the Corps may issue under a Nationwide Permit and not require mitigation, but the DHEC may require it under the 401.

- Q&A

- In the eight coastal counties, what is the DHEC-OCRM's position to address areas that were considered jurisdiction wetlands, but are no longer considered as such but are proposed for development? The SCMA is seeing many commercial and economic development sites that previously had significant mitigation plans in the past coming out with none now.

Mr. Stout stated that the CZC is a policy-based review regardless of the type of development. Each group has a component related to wetlands, worded, "any permanent alteration to wetlands will require..." The activity will require a federal or state permit. If it is not Waters of the US and a permit is not required at the federal level, then the activity has to trigger a permit at the state level [to be reviewed]. The larger developments require a NPDES Stormwater Construction Permit Review and trigger a review in that way.

- SCDOT asked if DHEC is using the Corps guidance document to calculate mitigation. Mr. Stout replied yes, that both his team and Mr. Hightower's team sit on the mitigation bank review team and help develop the guidelines and worksheets that everyone uses. Their policies are consistent with other regulatory agencies. One caveat is that the Corps allows for a 25% reduction in required credits if preservation is included on-site, but the DHEC does not use this reduction, because they allow for the onsite preservation to count as mitigation. Other calculations are consistent.
- Can you elaborate on the latest Stormwater Conveyance General Permit and where that potential approval stands? Are there potential changes based on public comments? Mr. Stout responded that this is from the Critical Area Permitting Section. The intent of that general permit is to reestablish stormwater conveyance through the critical area in tidal areas where the lack of maintenance has allowed these areas to silt in. It allows for the drainage of public waters. It went out on public notice and they have received considerable public comments. This was done in concert with local governments and in conjunction with the Corps. It should be close to finalization.
- Mr. Hightower confirmed that they are still signing easements on banks that are being proposed.
- A question was posed to elaborate on a section in the policy and procedure document of the Wetland Master Planning Policy that states that in the absence of a wetlands master plan, the resource policy, Chapter 3 Coastal Zone Management Program, will be utilized to guide the project certification. Mr. Stout explained that smaller wetlands can be incorporated into a project without restriction, and that phrasing "without restriction" is what can be found in the rest of the resource policies. Anything larger than one acre of wetland has to go through the process with a full policy review. The incorporation of wetlands without the additional policy review is done more so for isolated wetlands. It is tacked on as a condition for certification for Nationwide Permits because the phrasing is isolated wetlands. If they were to do a full review of the Nationwide Permits, they would have to ask for alternative analysis

on all of these small impacts, so instead they afford them the opportunity to do wetlands master planning and do some preservation onsite. It is applied to Waters of the US under a Nationwide Permit.

- It was noted that under the new Navigable Waters Protection rule the term “isolated” is no longer used. Mr. Stout noted the term is in the Wetlands Master Planning Policy, but they will start using the phrase “freshwater wetlands” more in certifications and determinations.

III. South Carolina Department of Transportation

- Mr. Conger introduced Vince McCarron, GIS and Mitigation Analyst, and Sean Connolly, Permits Division Manager. He noted that SCMA and SCDOT meet regularly.
- Mr. McCarron reported the Mitigation Dashboard is very close to ready. This will present the range of impacts that the SCDOT is anticipating associated with the transportation needs in SC. This will show critical watersheds and timelines.
- SCDOT appreciated the comments received on 18-01. The In Lieu Fee program was done to provide a safety net and allow for small projects in the future, not to bulk up mitigation credits. It is a unique opportunity to put the emphasis on what the innovation can be associated with mitigation. SCDOT has utilized their transportation liaisons to assist with the permitting. This is a means to assist the Corps by not taking their time to advance their projects.
- Mr. McCarron discussed the progress in the last few years in open communication with the SCMA, which has helped them adapt their process.
- In 2020, the SCDOT was able to award the Middle Pee Dee, Lower Savannah, and Salkehatchie/Combahee mitigation credit solicitations. They are still working through the South Fork Edisto River solicitation. The I-526 call-in is Thursday and the IFB is out now.
- The SCDOT is the first in the nation to contract and create this advanced mitigation program. It shows success in driving down cost and being able to secure that funding to process it. They are pleased that participation and competition is growing.
- The [solicitation for construction] of the Hunting Creek Mitigation Bank will be put out through the federal construction process in February 2021. Firms must be pre-qualified. The mandatory site meeting will be in late January. This is posted on the [SCMA website](#).
- In 2021, SCDOT is looking to solicit mitigation bank credits in the Congaree, the Middle Pee Dee, the Middle Savannah and the Tyger River watersheds. There will be flexibility in those areas, but they will maximize their ability to cover their transportation needs. Each of these will follow the lot system, which the SCDOT feels has been successful. If credits in the lots are available ahead of schedule, please let the SCDOT know. Assuming funding is available they may want to take the credits down as soon as possible. Through the first three mentioned above, the SCDOT is about two years away from credits. They will require monthly updates and want open dialogue to keep everything moving along successfully and avoid any issues.
- Mr. Connolly noted that although there has been great progress with the solicitations released this year and those expected next year, if the credits are not what the industry anticipated, it is due to funding. He cannot ask for the total anticipated mitigation need without complete project funding in place.

- Mr. Connolly noted that the SCDOT ran into an obstacle with the Corps when they were trying to use liaisons for banks that were not theirs. The SCMA may be able to assist in this issue of moving projects through the process with the Corps.
- Mr. Connolly recommended holding a one or two-day South Carolina Mitigation Conference immediately following the national conference in Raleigh, NC in July. This would continue the momentum to discuss the issues that affect South Carolina. Mr. Conger noted this falls in line with recent discussions of the SCMA's Executive Committee.
- Mr. Connolly thanked the SCMA for communicating with the Corps on stream lining their process.
- Q&A
 - The SCMA welcomes any questions and comments from members that need to be relayed to the SCDOT during the regular bi-monthly meetings. Mr. Conger noted that Mr. McCarron and Mr. Connolly have been very transparent in these meetings. Any questions related to open solicitations must be submitted in writing during the comment period per the guidelines and are not discussed in these meetings.
 - A letter is in review now by the Executive Committee that addresses the time line and other positive management suggestions for the Corps.
 - Mr. Conger noted that the Corps was invited to speak in this meeting, but were unable to participate.

IV. Membership Update

- Mr. Conger noted that 2020 was focused on relieving the Executive Committee of administrative work by hiring Capitol Consultants. They handle financial and administrative work. Communications will continue to improve in 2021 to the benefit of the membership. The Partnership Committee does need members.
- A number of projects throughout the Charleston District are raising concerns as it relates to mitigation prioritization. Many have emphasized onsite mitigation. The SCMA continues to work in the best interest of the mitigation providers in the state. To this end, as mentioned previously, the Executive Committee is finalizing a letter for the Corps that brings up numerous examples of onsite mitigation with an apparent lack of respect for the mitigation hierarchy with the emphasis on some of the permit application that utilize more preservation and buffering of on-site resources. The letter emphasizes that everyone should be held to the same standards, providing equivalent mitigation and focusing on projects that have a proper ratio of restoration and enhancement as compared to straight preservation. The other part of this letter is about timeliness. There is a lack of staff that needs to be brought up to higher management to address the timely processing of all components from the IRT. This letter will be posted on the website.
- As a result of the presentation in the October quarterly meeting on the Stream Quantitative Tool (SQT), DNR has requested to co-sponsor a SQT workshop with SCMA in 2021. The Executive Committee will work with them to finalize the details. The benefits will be passed on the membership. The Technical Committee is working on feedback on the DNR's request to review the SQT.
- The Executive Committee has voted to increase the 2021 Non-Voting Membership dues to \$400 after careful study of surrounding associations and in consideration of the value offered by the SCMA. Invoices will go out this month.

- The date and format of the first quarter meeting will be finalized as soon as possible. The meeting will be as participatory as possible to organize and energize the organization. Mr. Conger encouraged members to extend all meeting invitations to staff in their organization.
- All members are asked to spread the word of the SCMA to increase membership.

V. Adjournment

The meeting adjourned at 11:40 AM

Attachments:

Attachment A: [South Carolina Department of Environmental Control Presentation](#)

Attachment B: Registrants

First Name	Last Name	Organization
Jon	Becker	WSP
Daniel	Coggin	Coggin Asset Management, LLC
John	Collum	JMT
Cody	Conner	ICE
Sean	Connolly	SCDOT
Tucker	Creed	SCLWI
O. Kip	Dillihay II	Sandy Creek Partners
Rheta	DiNovo	RES
Timothy	Evans	Audubon SC
Monica	Folk	Norfolk Southern Railway's Brosnan Forest MB
Jacob	Foose	S&ME, Inc.
Ben	Furr	Land Management Group
Joshua	Gilman	Stantec Consulting Services, Inc.
Tory	Grayson	Palustrine Group
Charles	Hightower	DHEC, 401 Water Quality Certification Section
Daniel	Johnson	Wildlands
Brendon	Kelly	Wood E&IS
Glen	Kilgore	Palustrine Group LLC
Kristin	Knight-Meng	KCI Technologies, Inc.
David	Lach	Resource Environmental Solutions
Thomas	Larkin	Richardson Construction
Vince	McCarron	SCDOT
Murphy	McLean	South Coast Mitigation Venture, LLC
Ted	Melchers	Terracon

First Name	Last Name	Organization
Jamey	O'Shaughnessey	Eco Terra
Russell	Parr	RLC
Bob	Perry	Palustrine Group
William (Will)	Rector	Wood Environment & Infrastructure Solutions, Inc.
Sydni	Redmond	Passarella and Associates, Inc.
Andy	Ruocco	Terracon
Christopher	Ryan	RES
Kelly	Sands	Westervelt Ecological Services
Marcus	Sizemore	Stantec
Ryan	Smith	LMG
Christopher M.	Stout	DHEC, Coastal Zone Consistency Section
Matthew	Thomas	JMT
Phillip	Todd	North State Env
Mark	Wesson	JDA
John	Wigginton	Westervelt
G. Alan	Wood	American Forest Management