

# Beaufort County Stormwater Management Utility Board (SWMU Board) Meeting Minutes

May 8, 2019 at 2:00 p.m. in Executive Conference Room, Administration Building, Beaufort County Government Robert Smalls Complex, 100 Ribaut Road, Beaufort, South Carolina

## Board Members

### Present

William Bruggeman  
Marc Feinberg  
James Fargher  
James Clark  
Patrick Mitchell  
Allyn Schneider  
Steven Andrews

### Absent

### Beaufort County Staff

Ashley Jacobs  
Eric Larson  
David Wilhelm  
Melissa Allen  
Carolyn Wallace  
Katie Herrera  
Daniel Rybak  
Thomas Keaveny  
Brittany Ward

## Ex-Officio Members

### Present

Neil Desai  
Kim Jones  
Scott Liggett

### Absent

Van Willis

### Visitors

Alice Howard, County Council District 4  
Denise Parsick, Beaufort Conservation District  
Dr. Denise Sanger, SCDNR  
Alan Warren, USCB

### 1. Meeting called to order – William Bruggeman

Mr. William Bruggeman welcomed the new Beaufort County Administrator, Ashley Jacobs and newest board member, Steve Andrews.

- A. Agenda – Approved.
- B. April 10, 2019 Minutes – Approved.

### 2. Introductions – Completed.

### 3. Public Comment(s) – None.

### 4. Reports – Mr. Eric Larson and Mr. David Wilhelm provided a written report which is included in the posted agenda and can be accessed at:

<https://www.beaufortcountysc.gov/stormwater-management-utility-board/agendas/2019/050819.pdf>

#### A. Utility Update – Eric Larson

In reference to item #4, the Town of Hilton Head is preparing their concurrence letter. The site visit is on hold (item #5), as the County will be meeting on Thursday and Friday with the

military installations about stormwater fees in hopes to make progress. An update to item #6, the first reading of the budget is schedule for May 28<sup>th</sup>.

**B. Monitoring Update – Eric Larson**

Mr. Larson pointed out [in reference to the quarterly monitoring report] that Okatie West is performing great for bacteria removal. The ponds for HWY 278 (Barrel Landing), one is working well and one is not, so maintenance crews are scheduled to do some rehab on the pond and fix the outfall structure. Mr. Larson noted there are some high counts on the outfalls near Habersham, the Beaufort County Administration building and Bay Street.

**C. Stormwater Implementation Committee (SWIC) Report – Eric Larson**

Please reference the report, no additional updates.

**D. Stormwater Related Projects – Eric Larson**

In reference to item #3, the County is working on grant applications; one for the acquisitions of homes and one for a watershed study. They are to be submitted by the end of the month. In response to a question, Mr. Larson introduced Dan Rybak and explained that he is working with Pamela and Angel in Disaster Recovery to put together study estimates and a scope of work. Item #9 is a new topic, the Lady's Island land use plan had two recommendations to consider: a sea level rise ordinance and no fill ordinance (impact that fill has on salt marsh, wetland, and sandy soil). Mr. Larson is sitting on that committee.

**E. Professional Contracts Report – Eric Larson**

Please reference the report, no additional updates.

**F. Regional Coordination – Eric Larson**

Item #6 is a new item; Mr. Larson was approached by a rep from Nature Conservancy, which prompted a conversation about regionalization and rate structure. They are very interested in being a part of the discussion when public comments are made on the draft.

**G. Municipal Reports – Eric Larson**

Ms. Kim Jones thanked Katie Herrera for participating in the May River Clean-Up. There were approximately 370 participants.

Mr. Neil Desai shared that the City of Beaufort has a public meeting coming up for the Mossy Oaks project. The M&R permit was received from OCRM and the City has met with school reps from Mossy Oaks.

Ms. Jones suggested special presentation topic ideas such as microplastics and tire tread. Ms. Jones attended the Center for Watershed Protection annual conference. Sea level rise approach and flooding were discussed and there was a combination of perspectives from engineering to public outreach and education present. She expressed that people were willing to share information.

**H. Municipal Separate Storm Sewer System (MS4 Update) – Eric Larson**

In reference to #9, OCRM is doing a general permit for M&R. Mr. Larson is working with SWIC members to respond, the comments are due May 12<sup>th</sup>.

## **I. Maintenance Projects Report – David Wilhelm**

Mr. David Wilhelm informed the Board that all projects are coming in on budget. He pointed out the Bellinger Bluff Road project, which was a large ditch to reconstruct, some areas were more than 12 feet deep. Between the three major projects about 57,000 yards of reusable material was collected to be reused on other projects. For roadside ditch clean out, the goal is to stay between \$3.00 and \$5.00 per linear foot.

Mr. Wilhelm mentioned the County is always trying to find ways to increase efficiency and shared that Matt Rausch, Superintendent, took the initiative to explore alternative fuel heavy equipment. He went to Caterpillar dealer to look at new electric assist motor equipment, which could provide a 75% reduction in fuel costs. Public Works plan to see how they work [perform] and get feedback on the new technology to see if it is worthwhile.

Earth Day was a regional clean-up day, Beaufort County coordinated with Jasper, Hampton and Colleton Counties. Beaufort County picked up about 25,000 pounds of trash and the other three counties collected a combined amount of about 20,000 pounds. The plan is to expand the program even more next year, as it is the 50<sup>th</sup> Anniversary of Earth Day, and grow the initiative Statewide.

## **5. Unfinished Business**

**A. Delinquent Accounts Brief – Thomas Keaveny** – Mr. Tom Keaveny, Counsel for Beaufort County brought Ms. Brittany Ward along to assist in briefing the Board on delinquent accounts [stormwater fees]. He shared that Ms. Ward has been working with the County for about six months as a paralegal and as of today she is a lawyer in their office.

Mr. Keaveny explained that the Legal department was asked to evaluate the possibility of taking action to collect unpaid stormwater fees. From 1999 to present there are \$7.3 million in fees outstanding from Federal agencies and \$33,000 outstanding from the State.

Mr. Keaveny explained that there is a state case, involving Charleston, that ruled there is an obligation to pay stormwater fees, the basis for informing State agencies they owe these fees. He mentioned that SC Department of Parks and Rec have recently paid their fees in response to the letter sent out by their office. Mr. Keaveny and Ms. Ward indicated that Legal sent out letters for delinquent state accounts on April 8<sup>th</sup>, identifying the case law and gave them 45 days to respond or pay.

Mr. Keaveny thanked Mrs. Carolyn Wallace for working closely with Ms. Ward to help to identify federal fees that are owed. He explained the Clean Water Act is the basis for asking the federal government to pay their stormwater fees. The federal government “shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.”

In 2011, a Stormwater amendment was added to the Clean Water Act. It defines a reasonable service charge is “any reasonable nondiscriminatory fee, charge, or assessment that is— (A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and (B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.”

Mr. Keaveny has responded to several responses from lawyers indicating they don't owe the fees. He explained that County Administration in the past has not pursued the fees, but recently Administration and Council have become aware of the magnitude of the fees, the needs of the County and the unfairness of other fee payers having to absorb the costs for those not paying.

Legal is prepared to send letters out. The County is trying to resolve without getting into litigation, as it is expensive. The other perspective is that the County likes the military presence in our County and want to approach the pursuit of delinquent fees in a rational way. Mr. Keaveny has reached out to and has appointments to speak with lawyers for the local bases.

In response to a question about similar cases over stormwater fees, Mr. Keaveny commented there is a pending case that Ms. Ward has reviewed. She commented that the City of Wilmington (Delaware) has a hearing scheduled for 2020, and it is equivalent to the County's situation. It is a military institution they are suing for about \$3.1 million. She mentioned that most similar situations she found were settled through negotiations.

Mr. Keaveny explained there are law firms around the country that handle this type of case. The County has scouted out three firms that they are prepared to talk to if necessary; one of which has someone who manages their South Carolina client's clean water act's issues.

Brief conversation took place following a question about not pushing the issue for them to pay all these years (why now) and who makes the decision to go to litigation.

## **6. New Business –**

**A. Living Shorelines –** Dr. Denise Sanger with SCDOT presented on behalf of Peter Kingsley-Smith, who has been doing research primarily related to oysters. The ecological importance of shorelines is for water quality, nursery habitat and nutrient cycling/greenhouse gases. They serve as a natural breakwater, improve water quality, provide habitat and food, support fisheries, and protect shorelines. Threats to the shorelines are coastal development and erosion.

South Carolina Oyster Restoration and Enhancement (SCORE) Program is where volunteers bag oyster shells and use them to form oyster reefs. The goal of the program was stewardship and to create habitat. The program began in 2001 and has created 294 reefs at 107 sites and has made over 4.8 acres of new reef habitat. They create living shorelines in places where they know where they will be successful. The program does bagged shell, loose shell, crab traps (coated in concrete) and oyster castles.

Dr. Sanger shared images of successful oyster reefs over time, showing the marsh filling in behind the reefs. She shared a slide about maintaining land-water connection with examples along the Eastern Coast. SC is big into bag oyster shells, NC uses rock, MD uses rock breakwater, DE used coir log made of coconut fiber, GA utilizes metal bags filled with oyster shells and laying on the edge instead of using rip rap to prevent upland bank erosion.

Dr. Sanger shared slides on salt marsh migration and coastal squeeze, as well as living shorelines and coastal structure examples. There are research papers following a storm and oyster reefs can outpace sea-level rise.

Dr. Sanger shared the 2015-2019 NSC Goals. Living shoreline project components: analyze existing data, created 16 new sites and had 1-2 years to monitor, evaluation of historical sites and conducted a small case study. SCDNR Living Shorelines sites map and location of the 16 sites (13 sites created in Year 1 and 3 in Year 2). Dr. Sanger shared images of different projects. The Curlex (aspen bark in a sock material) was tested, but eroded away overtime. Coir

log was tested and reassessed after Hurricane Matthew, and sediment was captured behind the coir log. Some sites had grass planted a year after the system stabilized.

They use a diversity of approaches to collect data using RTKs (GPS and elevation accuracy) and low level aerial flights. They look at elevation of the living shoreline site compared to the control sites.

In reference to the Outright Failure Rate slide, Dr. Sanger explains that failures mean that the material moved offsite or disintegrated. She shared the next steps of the program.

Questions arose about the following topics:

- OCRM Permitting Process – It will be a lengthy process, but is currently done under general consideration.
- Army Corps of Engineering - You have to have a permit with them as well.
- Permit Audience - The ultimate goal is that private homeowners will ask for permit to install a living shoreline adjacent to their property.
- Criteria for placement of oyster bag in relation to marsh edge - It is based on elevation and slope.
- Source of Oysters – DNR has the oyster recycling program and that is where the shells came from.

**7. Public Comment(s) – None.**

**8. Next Meeting Agenda – Approved.**

**9. Meeting Adjourned**