



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

MARY PENNY KELLEY

Secretary

TANCRED MILLER

Director

CRC-24-18

October 29, 2024

MEMORANDUM

TO: Coastal Resources Commission
FROM: Cathy Brittingham
SUBJECT: Fiscal Analysis, 15A NCAC 07H .2302 and .2305, Approval Procedures and Specific Conditions for the General Permit for Replacement of Existing Bridges and Culverts in Estuarine Waters, Estuarine and Public Trust Shorelines, Public Trust Areas, and Coastal Wetlands

At your August 2024 meeting, the Commission approved rule language for 7H .2302 to increase the timeframe that the GP .2300 is in effect after it is issued from 120 days to two years. The Commission also approved rule language for 7H .2305 to return specific conditions for the construction of bridges and culverts using GP .2300. The approved rule language for both of these Sections also includes additional non-substantive changes to the wording and format.

Proposed amendments to 15A NCAC 07H .2302 are necessary due to an inadvertent change that occurred during other rulemaking prior to October 1, 2022. Proposed amendments to 15A NCAC 07H .2305 return vacated rules with RRC revisions and provide clarity regarding specific use standards for the bridges and culverts general permit.

DCM estimates that the proposed rule amendments would result in a positive fiscal impact related to permit fees for NCDOT, local governments and private property owners that apply for a GP .2300. DCM estimates that the benefits to DCM and the applicant from restoring the two-year timeframe, and restoring the Specific Conditions, overshadow the minor benefits that would occur for DCM due to an increase in permit fee revenue if the proposed rule amendments are not approved. DCM estimates that the proposed rule amendments would have a positive fiscal impact related to operating costs for applicants and DCM.

The proposed rule amendments are not expected to have a significant impact on any other state agencies because other state agencies very rarely need to replace existing bridges and culverts. The proposed rule amendments are not expected to have a significant impact on any federal agencies because federal agencies seek approval to replace existing bridges and culverts through DCM's federal consistency program, which is a different process.

The fiscal analysis has been submitted to DEQ and OSBM and is awaiting their approval. Staff is recommending approval of the fiscal analysis conditioned upon OSBM approval, which will allow the rules to proceed to public hearing.



North Carolina Department of Environmental Quality | Division of Coastal Management

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Fiscal Analysis

15A NCAC 07H .2302 and 07H .2305, Approval Procedures and Specific Conditions for the
General Permit for Replacement of Existing Bridges and Culverts in Estuarine Waters, Estuarine
and Public Trust Shorelines, Public Trust Areas, and
Coastal Wetlands

Prepared by
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N.C. Division of Coastal Management
919-707-9149

October 23, 2024

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rules	15A NCAC 07H .2302 Approval Procedures and 15A NCAC 07H .2305 Specific Conditions
Description of the Proposed Rules	<p>Amendments to 15A NCAC 07H .2302, propose to increase the timeframe that the permit is in effect after it is issued from 120 days to two years. The time period was inadvertently changed during other rulemaking prior to October 1, 2022. The CRC also proposes additional non-substantive changes to the wording and format of this Section.</p> <p>Amendments to 15A NCAC 07H .2305 propose specific conditions for the construction of bridges and culverts using the CAMA general permit. These conditions impose limitations on the length of a bridge that can be replaced using this general permit as well as provide specific conditions for expansion, navigational clearances, amount of wetland fill and disposal of excavated material or construction debris. The CRC also proposes additional non-substantive amendments to the wording and format of this Section.</p>
Agency Contact	Cathy Brittingham, Transportation Project Coordinator Cathy.Brittingham@deq.nc.gov (919) 707-9149
Authority	G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; G.S. 113A-124
Necessity	<p>Proposed amendments to 15A NCAC 07H .2302 are necessary due to an inadvertent rule change that occurred during the rules review process regarding the time that the permit is in effect after issuance.</p> <p>Proposed amendments to 15A NCAC 07H .2305 are necessary to provide the regulated public clarity regarding the type of permit specific projects that are qualified to use the General Permit .2300 based on project parameters.</p>
Impact Summary	State government: Yes Local government: Yes Federal government: No Private citizens: Yes Substantial impact: No

Introduction and Purpose

The purpose of General Permit (GP) .2300 is to streamline environmental permitting for the replacement of existing bridges and culverts that meet General and Specific Conditions that have been reviewed and accepted by DCM and other state and federal agencies that review CAMA permit applications. For example, there are conditions that the Coastal Wetland impacts may not exceed 750 square feet, and that the bridge span over wetlands and waters may not be more than 400 feet, among others. If a project does not meet these conditions, then the applicant may request authorization through a CAMA major permit.

Projects authorized by General Permit .2300 range in size from simple culvert replacements to large bridge replacement projects. Most projects authorized under this General Permit are for N.C. Department of Transportation (NCDOT) projects. However, applicants may include local governments, and rarely private property owners and other state agencies. The fee for a GP .2300 is \$400.

GP .2300 was created in coordination with NCDOT, other state and federal agencies, local governments, and interested parties to streamline the environmental review and permitting procedures. As a result of this coordination, GP .2300 is pre-approved by other agencies that review and comment on CAMA permit applications, and projects in general do not require individual review by other agencies. The Specific Conditions found within Section .2305 are a critical element to ensure that projects authorized by GP .2300 will minimize impacts to coastal resources.

The need for the proposed rule amendments within Section .2302 is due to an administrative error that occurred during the rules review process. Prior to the error, an issued permit for a specific project was in effect for two years after issuance. During the rules review process, the time that the permit is in effect after issuance was inadvertently changed to 120 days. This change became effective on October 1, 2022.

The need for the proposed rule amendments within Section .2305 is due to an objection from the Rules Review Commission (RRC) related to the use of the phrase "...significantly affect the quality of the human and natural environment..." The entirety of Section .2305 was returned due to the RRC objection, effective on October 5, 2023. Since that time, DCM has coordinated with the RRC on a definition that has satisfied the RRC.

Description of the Proposed Rules

Amendments to 7H .2302(b)(1) and (b)(2), include the requirement for a project narrative and dated plat or plats showing existing and proposed development. Projects to replace existing bridges and culverts have the potential to impact multiple adjacent riparian property owners, and they also have the potential to impact multiple coastal resources, including navigation and public trust access. Ensuring that the project narrative and dated plats are with the application allows project details to be captured correctly during the application review, so that the overall proposed development is understood by all interested parties.

The CRC also proposes to add the word "riparian" to the term "adjacent property owners" within the existing text of (b)(4). This is to clarify that only adjacent riparian property owners need to be notified.

Amendments to 7H .2302(c), include restoration of the two-year timeframe that a permit is in effect for a specific project. This is since bridges and culverts cannot be constructed in 120 days. The average construction time for a DOT project from start to finish is approximately one year. The two-year timeframe allows adequate time after permit issuance for contract advertisement, letting, and construction. It also allows for any unforeseen delays that may occur, such as a hurricane or storm that delays construction. Amendments include approval of individual projects to be acknowledged in writing by DCM, and for DCM to provide the permittee with a copy of the issued GP .2300.

Amendments to 7H .2305 address the RRC’s objection to the use of the phrase “significantly affect the quality of the human and natural environment...”.

Figure 1. A typical bridge replacement authorized under GP .2300.



Image source: DCM

COSTS OR NEUTRAL IMPACTS

Department of Transportation

DCM’s analysis shows that the proposed rule amendments will have a positive impact for environmental permitting for NCDOT by providing a two-year timeframe for NCDOT to construct bridges and culverts authorized under GP .2300. The proposed two-year time would provide adequate time for the authorized project to be constructed. When a project authorized by a GP cannot be constructed within the effective period of the permit, then the applicant must request a permit reissuance. This results in two types of costs to the applicant: (1) applicant’s staff time required to submit applications for reissuance, respond to any questions from DCM during processing, and to distribute the reissued permit to its contractors and/or staff; (2) and the cost to the applicant of \$400 for each reissued permit. If the proposed rule amendments are not approved, and the 120-day timeframe is not changed back to two years, then when a project cannot be completed in 120 days, NCDOT could incur additional costs due to NCDOT staff time and permit fees.

Approximately 20-40 GP .2300 are issued to NCDOT each year, depending on funding, storm activity, and other factors. Therefore, the estimated cost to NCDOT of permit fees when the two-year timeframe was in effect, was in the range of \$8,000.00 to \$16,000.00 per year. In the absence of the proposed rule amendments, the cost to NCDOT due to the cost of reissued permits when a project cannot be constructed in the 120-day timeframe could increase to a range of \$16,000.00 to \$32,000.00 or more per year. The amount of increased NCDOT staff time that would be required if the 120-day timeframe remains in effect would be significant.

Local Government

The proposed rule amendments will benefit local governments who apply for a GP .2300. They will experience the same types of benefits as NCDOT from the proposed two-year timeframe.

Approximately 5-10 GP .2300 are issued to local governments each year, depending on funding, storm activity, and other factors. Therefore, the estimated cost to local governments of permit fees when the two-year timeframe was in effect, was in the range of \$2,000.00 to \$4,000.00 per year. In the absence of the proposed rule amendments, the cost to local governments due to the cost of reissued permits when a project cannot be constructed in the 120-day timeframe could increase to a range of \$4,000.00 to \$8,000.00 or more per year.

Private Property Owners

The proposed rule amendments will benefit private property owners who apply for a GP .2300. They will experience the same types of benefits as NCDOT and local governments from the proposed two-year timeframe.

Approximately 5-7 GP .2300 are issued to private property owners each year, depending on budget, storm activity, and other factors. Therefore, the estimated cost to all private property owners combined of permit fees when the two-year timeframe was in effect, was in the range of \$2,000.00 to \$2,800 per year. In the absence of the proposed rule amendments, the cost to all private property owners combined due to the cost of reissued permits when a project cannot be constructed in the 120-day timeframe could increase to a range of \$4,000.00 to \$5,600 or more per year.

Division of Coastal Management

DCM anticipates that the proposed rule amendments will result in a benefit to its operating costs related to staff time. In the absence of the proposed rule amendments, and if a project cannot be completed in 120 days, DCM would incur additional costs due to DCM staff time required to review applications for reissuance. Each permit reissuance requires a site visit by DCM staff to ensure nothing has substantially changed and to observe progress for projects currently under construction.

DCM will also benefit with the restoration of the GP .2300 Specific Conditions as some projects may require a CAMA major permit, due to the lack of assurance the Specific Conditions provide ensuring that the project will be constructed in a manner minimizing impacts to coastal resources. The CAMA major permit process is a longer, more in-depth review, that requires much more staff

time than a GP .2300. The amount of increased DCM staff time that would be required if the 120-day timeframe remains in effect would be significant, but has not been quantified.

DCM anticipates that there could be a minor reduction in permitting receipts due to loss of permit fee revenues that would occur from reissuing expired permits authorized under GP .2300 if the 120-day timeframe was to remain in effect. However, this minor reduction is inconsequential when compared to the benefits to DCM and the applicants from a more efficient, streamlined, GP .2300.

COST/BENEFIT SUMMARY

In summary, DCM estimates that the proposed rule amendments would result in a positive fiscal impact related to permit fees for NCDOT and local governments that apply for a GP .2300. DCM estimates that the benefits to DCM and the applicant from restoring the two-year timeframe, and restoring the Specific Conditions, overshadow the minor benefits that would occur for DCM due to an increase in permit fee revenue if the proposed rule amendments are not approved. DCM estimates that the proposed rule amendments would have a positive fiscal impact related to operating costs for applicants and DCM.

The proposed rule amendments are not expected to have a significant impact on any other state agencies because other state agencies very rarely need to replace existing bridges and culverts. The proposed rule amendments are not expected to have a significant impact on any federal agencies because federal agencies seek approval to replace existing bridges and culverts through DCM's federal consistency program, which is a different process. Private property owners are not expected to be impacted as they very rarely need to replace bridges and culverts. Any impacts to state and federal agencies and private property owners would be beneficial due to the two-year timeframe to complete construction.

Proposed amendments to NCAC 7H .2300- General Permit for Replacement of Existing Bridge and Culverts in Estuarine Waters, Estuarine and Public Trust Shorelines, Public Trust Areas, and Coastal Wetlands

15A NCAC 07H .2302 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51> and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

- (1) the site location, **project narrative**, dimensions of the project area, and ~~his or her~~ **applicant's** name and address; and
- (2) **a dated plat(s) showing existing and proposed development; and**
- (3) confirmation that a written statement has been obtained and signed by the adjacent riparian property owners, indicating that they have no objections to the proposed work; or

(4) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent riparian property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent riparian property owners will be interpreted as the adjacent riparian property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. ~~Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire.~~ Construction authorized by this permit shall be completed within two years of permit issuance or the permit shall expire and a new permit shall be required to begin or continue construction. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued. Pursuant to G.S. 136-44.7B, permits issued to the North Carolina Department of Transportation for projects identified in the Transportation Improvement Program shall not expire. Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this General Permit.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;
Eff. June 1, 1996;
Amended Eff. May 1, 2010;
Readopted Eff. October 1, 2022.
Eff. Month XX, 2025;*

15A NCAC 07H .2305 SPECIFIC CONDITIONS

(a) This General Permit is applicable to bridge replacement projects spanning no more than 400 feet of estuarine water, public trust area, and coastal wetland AECs.

(b) Existing roadway deck width shall not be expanded to create additional lanes, with the exception that an existing one lane bridge may be expanded to two lanes provided the proposed project does not create significant adverse impacts as defined in 15A NCAC 07H.0208 (7) and (8).

(c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.

(d) All demolition debris shall be disposed of landward of all wetlands and the Normal Water Level (NWL) or Normal High Water (NHW) level as defined in 15A NCAC 07H .0106, and shall employ soil stabilization measures to prevent entry of sediments in the adjacent water bodies or wetlands.

(e) Bridges and culverts shall be designed to allow passage of anticipated high water flows.

(f) Measures sufficient to restrain sedimentation and erosion shall be implemented at each site.

(g) Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine waters shall meet the following conditions:

- (1) Replacing bridges with culverts shall not be allowed in primary nursery areas as defined by the Marine Fisheries or Wildlife Resources Commissions.
- (2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not exceed 2,500 square feet except that the coastal wetland component shall not exceed 750 square feet.
- (3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.
- (4) There shall be no temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands.
- (5) No excavated or fill material shall be placed in any wetlands or surrounding waters outside of the alignment of the fill area indicated on the work plat.
- (6) All excavated materials shall be confined above Normal Water Level or Normal High Water Level and landward of any wetlands behind dikes or other retaining structures to prevent spill-over of solids into any wetlands or surrounding waters.
- (7) No bridges with a clearance of four feet or greater above the NWL or NHW shall be allowed to be replaced with culverts unless the culvert design maintains the existing water depth, vertical clearance and horizontal clearance.
- (8) If a bridge is being replaced by a culvert(s) then the width of the waterbody shall not be decreased by more than 40 percent.
- (9) All pipe and culvert inverts placed within the Public Trust or the Estuarine Waters AECs shall be buried at least one foot below normal bed elevation to allow for passage of water and aquatic life. Culverts placed in wetlands are not subject to this requirement.

History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;

Eff. June 1, 1996;

Amended Eff. May 1, 2010;

RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

Eff. Month XX, 2025