



NORTH CAROLINA
Environmental Quality

ROY COOPER
Governor

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Director

CRC-19-09

February 5, 2019

MEMORANDUM

TO: Coastal Resources Commission

FROM: Kevin Hart

SUBJECT: Proposed Rule changes for 15A NCAC 07H.1900 General Permit to Allow Temporary Structures Within Coastal Shorelines and Ocean Hazard AECs

The Division of Coastal Management (DCM) has recently been in discussions with the scientific research community regarding when proposed research projects may need a CAMA permit. Over the past few years, the Division has seen more research projects involving structures in the water and CRC rules currently do not specifically acknowledge research or structures associated with research, regardless of scale. Since there is no General Permit available for the types of “development” activities typically associated with scientific research, DCM has historically requested the scientific research project applications be processed through the CAMA Major Permit process. This has resulted in problems for time-sensitive grant funding, delays and confusion among the research community. The development of General Permit rule language specific to research projects is the result of collaboration between DCM and the research community. The adoption of this rule language would assist in the management of research projects within Areas of Environmental Concern and provide regulatory flexibility to accommodate scientific research projects.

In 2017, DCM Staff met with researchers from UNC Institute of Marine Sciences, East Carolina University, University of North Carolina at Wilmington, UNC Coastal Studies Institute, NC Sea Grant, and the National Oceanic Atmospheric Administration to discuss the issue and gain insights on typical project sizes, duration, locations, materials, and concerns regarding derelict or abandoned projects.

Rather than incorporating DCM Staff concerns and the research communities’ needs into a new permit, Staff recommend incorporating research projects into the existing GP 07H.1900 General Permit To Allow For Temporary Structures Within The Estuarine Shoreline and Ocean Systems



AECs. This permit was originally developed for short-term projects such as boat races, fishing tournaments, seasonal businesses, and the film industry.

The proposed amendments include:

- Identifying a specific party responsible for research projects.
- Increasing the permit timeframe to one year from 180 days.
- Including conditions to not impede existing public trust uses.
- Reducing the overall size limit from 1 acre to a cumulative size limit of 100 square meters.
- Modifying language to be consistent with other general permits.

DCM staff is requesting that the Coastal Resources Commission (CRC) begin the rulemaking process to modify NCAC 07H.1900 to include language and specific conditions related to research projects as requested by the research community and DCM staff.

I look forward to discussing these amendments at the upcoming meeting in Morehead City.

Proposed amendments to 15A NCAC 7H .1900

SECTION .1900 – GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN COASTAL SHORELINES, THE ESTUARINE AND OCEAN HAZARD SYSTEMS AECs

15A NCAC 07H .1901 PURPOSE

A permit under this Section shall allow for the placement of temporary structures within the estuarine and public trust shorelines and ocean hazard systems AECs according to the provisions provided in Subchapter 7J .1100 and according to the rules in this Section.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. August 1, 2000.

15A NCAC 07H .1902 APPROVAL PROCEDURES

(a) The applicant must shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A .0101 and complete an application and complete a general permit application form requesting approval for development. Applicants shall provide information on site location, dimensions of the project area, proposed activity, name, address, and telephone number. For temporary structures associated with scientific research, permit applicants shall be lead investigators on behalf of accredited educational institutions, or state or federal agencies.

(b) ~~The~~ If a temporary structure is to be located less than 400 feet waterward of normal high water or normal water level, or within the established pier head line as determined by the Division of Coastal Management, the applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, and indicate that no response will be interpreted as no objection. DCM staff will 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 DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he must submit an application for a major development permit. If DCM determines that the project exceeds the conditions established by this General Permit, DCM shall notify the applicant that a Major Permit application shall be required.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the site of construction of the proposed development. Written authorization to proceed with the proposed development may be issued by the Division during this visit. Temporary structures authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The project site shall be restored to pre-development conditions and all All work must structures shall be completed and the structure removed within 180 days following the day written authorization is issued, one year of permit issuance, or by the date specified with the General Permit.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. January 1, 1990.

15A NCAC 07H .1904 GENERAL CONDITIONS

- (a) Temporary structures for the purpose of this general permit are those which are constructed ~~or installed~~ within the ~~ocean hazard or estuarine and ocean~~ system AECs and because of dimensions or functions, ~~do not meet the criteria of the existing general permits (i.e. are not a bulkhead, pier, rip rap, groin, etc.)~~; cannot be authorized by another General Permit within this Subchapter.
- (b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC except for the placement of auxiliary structures such as signs, fences, posts, ~~pilings, etc., or pilings.~~
- (c) There shall be no fill ~~or excavation~~ activity below ~~the plane of mean normal high water or normal water level, associated with the structure.~~
- (d) This permit ~~will shall~~ not be applicable to proposed ~~construction development~~ where the ~~Department Division of Coastal Management~~ has determined, based on ~~an initial a~~ review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources Environmental Quality~~ to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (f) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by regulations adopted by any federal, state, or local agency.
- (g) Development carried out under this permit ~~must shall~~ be consistent with all local requirements, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994.

15A NCAC 07H .1905 SPECIFIC CONDITIONS

Proposed temporary structures ~~must shall~~ meet each of the following specific conditions to be eligible for authorization by the general permit:

- ~~(1)(a)~~ All aspects of the structure shall be removed and the site returned to pre-project conditions at the ~~termination expiration~~ of this general permit.
- ~~(2)(b)~~ There shall be no work within any productive shellfish ~~beds, beds without authorization from the Division of Marine Fisheries.~~
- ~~(3)(c)~~ The proposed ~~project structure~~ shall not involve the disturbance of any marsh, submerged aquatic vegetation, or other wetlands including excavation ~~and/or or~~ filling of these areas.
- ~~(4)(d)~~ The proposed activity shall not ~~involve the disruption of normal~~ ~~disrupt~~ navigation and transportation channels and shall be ~~properly~~ marked to prevent being a hazard to navigation.
- ~~(e)~~ The proposed structure shall not impede public access or other public trust uses.
- ~~(5)(f)~~ The proposed ~~project structure~~ shall not ~~serve as a habitable place of residence, be habitable.~~
- ~~(6)(g)~~ There shall be no ~~adverse~~ disturbance of existing ~~dune structures, dunes.~~
- ~~(7)(h)~~ Development carried out under ~~Temporary structures authorized by this permit~~ shall not ~~individually or cumulatively exceed one acre in size in accordance with 15A NCAC 2H .1002(1) and 15A NCAC 2H .1003(a)(1), 100 square meters in size.~~
- ~~(8)(i)~~ No sewage disposal system will be allowed without a permit authorized by either the Division of ~~Environmental Health or the Division of Environmental Management.~~ Structures shall not be constructed in a designated Primary Nursery Area without approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;
Eff. March 1, 1989;
Amended Eff. May 1, 1990.