



NC DEQ  
SECRETARY'S ENVIRONMENTAL  
JUSTICE AND EQUITY  
ADVISORY BOARD

## Permitting 101

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Sheila Holman,  
Assistant Secretary for the Environment



NORTH CAROLINA  
Department of Environmental Quality

# DEQ Divisions

## Structural Overview



Air Quality



Coastal Management



Energy, Mineral and Land  
Resources



Environmental  
Assistance and Customer  
Service



Environmental Education  
and Public Affairs



Marine Fisheries



Mitigation Services



Waste Management



Water Infrastructure



Water Resources



Administrative Divisions



# *Permitting Divisions*

- Division of Air Quality
- Division of Energy, Mineral and Land Resources
- Division of Waste Management
- Division of Water Resources
- Division of Coastal Management

**Approximately 200 types of permits, certificates, and licenses**

# Statutory Authority

## Legal Requirements



- General Statutes: Legally binding laws and requirements
  - Developed and ratified by the General Assembly and signed into law by the Governor
- Rules: implement the statutes and provide additional detail/information on the program function and requirements (aka, North Carolina Administrative Code/NCAC)
  - For most water quality, air quality, and waste management rules, developed and adopted by the Environmental Management Commission.
  - For coastal management rules, developed and adopted by the Coastal Resources Commission



# 401 Certification

Division of Water Resources

1. 15A NCAC 02H .0503 (a) requires General Certifications to be noticed (via listserv and website posting) once. After that process completes, the GCs are not re-noticed for their lifetime (usually 5 years). **They make up the majority of 401s issued.**

## **15A NCAC 02H .0503 PUBLIC NOTICE AND PUBLIC HEARING**

(a) The Division shall provide public notice for proposed General Certifications. This notice shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices>. Notice shall be made at least 30 calendar days prior to issuance of the General Certification by the Division. Public notice shall not be required for those activities covered by Certificates of Coverage under a General Certification.

2. Public Notice for Individual Certifications are required by 15A NCAC 02H .0503 (b)

(b) Notice of each pending application for an individual certification shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.





# *Title V Permit*

Division of Air Quality



- Title V - public participation is codified in 15A NCAC 02Q .0521
  - A) Requirement of public notice with opportunity for comments and a hearing on all draft permits and permit revisions (with some exceptions).
  - B) Notice of any draft permit which then goes to public hearing must be put in newspaper, posted on DAQ website, and emails to person on emailing list.
  - C) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting draft permit on DAQ website and given to interested persons.
- Must allow 30 days for public comments, and Director may determine public hearing is necessary (additional 30 day notice of hearing).

# *Ultra Vires*

- Ultra vires refers to the legal principle that an authority (for example: NCDEQ) can exercise only so much power as is conferred on it by law
- For DEQ, this means that the agency cannot take actions in violation of the “express language” of its regulations
- This includes both laws and rules under the Administrative Code (since these rules must prescribe to the laws)
- This has been upheld in the North Carolina Court of Appeals on several occasions (see 119 N.C. App. 772, 776, 460 S.E 2d 194, 197)



*Questions?*

**Sheila Holman**

Assistant Secretary for the Environment

NCDEQ

Phone/Fax: 919-707-8619

[sheila.holman@ncdenr.gov](mailto:sheila.holman@ncdenr.gov)

