



North Carolina Department of Environment and Natural Resources

Division of Water Quality
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March 12, 2009

TO: 401 Water Quality Certification Mailing List

FROM: John Dorney, Program and Policy Development Unit
Cyndi Karoly, 401 Oversight and Express Permits Unit
Brian Wrenn, Transportation Permitting Unit
John Hennessy, Non-Point Source Assistance and Compliance

RE: Update on permitting programs for Waters of the State administered by the Division of Water Quality

The purpose of this memo is to inform you of several items in relation to surface waters programs administered by the Division of Water Quality (DWQ). For details regarding specific items, please follow the appropriate web links or contact the staff members referenced within each topic.

I. Goose Creek buffer rules now in effect in Mecklenburg and Union Counties

Please be aware that the Environmental Management Commission's Water Quality Management Plan for the Goose Creek Watershed, within the Yadkin Pee-Dee River Basin, is in effect as of February 1, 2009. This watershed is located in Mecklenburg and Union Counties and is home to the federally endangered mussel, the Carolina heelsplitter (*Lasmigona decorata*). These rules are intended to provide additional water quality protection for the Carolina heelsplitter and include site specific requirements for wastewater discharges, control of toxic substances, stormwater management and streamside buffer protection. The riparian buffer rules protect 100 foot wide, undisturbed buffers along waterbodies outside the 100 year floodplain and 200 foot wide, undisturbed buffers along waterbodies within the 100 year floodplain in the watershed. The buffer applies to intermittent streams, perennial streams, lakes, ponds, and estuaries that are depicted on the most recent printed version of the NRCS Soil Survey and/or the 1:24,000 scale USGS quadrangle topographic maps. Details of the rules can be found at <http://h2o.enr.state.nc.us/csu/GooseCreek.html>. Questions regarding these rules can be directed to Amy Chapman at 919-715-6823 or Amy.Chapman@ncmail.net.

II. Revised Credit Release Schedule for Forested Wetlands

The federal-state Interagency Review Team (IRT) has revised the credit release schedule for forested wetland mitigation projects in North Carolina. This revision was prompted by 33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources, which requires an initial monitoring period longer than five years for aquatic resources with slow development rates, such as forested wetlands. The federal rule was released by the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) on March 31, 2008 and can be found at <http://www.epa.gov/wetlandsmitigation/> under the heading "Final Compensatory Mitigation Rule."

The extended monitoring period will provide the IRT and mitigation providers with more time in which to ensure that a mitigation project is successfully developing the aquatic functions provided by forested wetlands. The IRT's "Revised Credit Release Schedule for Forested Wetlands" and a list of the wetland types included in the category of forested wetlands can be found on the DWQ Website at <http://h2o.enr.state.nc.us/ncwetlands/mitigation.html>. This revised credit release schedule will apply to all mitigation plans received by DWQ as of May 12, 2009.

III. PACG-TC Recommendations for EEP Expanded Service Areas in Catawba and Little Tennessee River Basins

The Program Assessment and Consistency Group (PACG) Technical Committee (TC) has recommended continuation of a previously-approved system for the use of mitigation credits generated by the Ecosystem Enhancement Program (EEP) in a specified adjacent cataloging unit (CU) for mitigation requirements in the Lower Catawba River Basin (HUC 03050103). The PACG-TC has also recommended a similar system to be applied to mitigation requirements in Little Tennessee HUC 060100204. Credits applied from the expanded service areas will be subject to higher mitigation ratios, in accordance with the Guidance on the Use of Compensatory Mitigation in Adjacent Cataloging Units, which is available from the Division of Water Quality's previous February 25, 2008 public notice (item IX of that notice) at

<http://h2o.enr.state.nc.us/ncwetlands/documents/MailingListMailoutFebruary2008.doc>.

Details regarding the PACG-TC recommendations and expectations can be found at

<http://h2o.enr.state.nc.us/ncwetlands/mitigation.html> within two memoranda entitled "Use of mitigation located in the Little Tennessee HUC 060120202 (LT 02) to compensate for permitted impacts in the Little Tennessee HUC 060100204 (LT 04)" and "Expanded service area for mitigating impacts within the Lower Catawba River Basin (HUC 03050103)" and linked on the web page. If you have comments regarding the PACG-TC recommendations, please forward your written comments by May 12, 2009 to Tammy Hill at Tammy.L.Hill@ncmail.net or 2321 Crabtree Blvd, Suite 250, Raleigh, NC, 27604.

IV. Revised Fee Schedule for Express Review Fees

The fee schedule for applications submitted under the Express Permits Program has been revised effective March 2009. No price increases have been made; rather, some of the prices have been reduced, such as those for Riparian Buffer Minor Variances and Coastal General Major Variances. The revised fee schedule is posted online at http://h2o.enr.state.nc.us/ncwetlands/documents/Express_fees_001.pdf.

V. Proposed modification of stormwater management condition of General Certifications 3704 (applied to Nationwide Permit 14) and 3705 (applied to Nationwide Permits 18, 29, 39, 41, 42, 44 and 46) and Individual Certifications

The DWQ is proposing modifications to the stormwater management condition of GCs 3704 and 3705. The purpose of these modifications is to increase consistency between the 401 Certification Stormwater Program and other stormwater programs implemented by the DWQ, such as Senate Bill 1967 (An Act to Provide for Improvements in the Management of Stormwater in the Coastal Counties in Order to Protect Water Quality) and the NPDES Phase II stormwater program. Additionally, new language has been added to clarify the 401 Unit's policies regarding the submittal and review of phased development plans. The proposed language for the revision is as shown below. Comments relating to this proposed revision may be forwarded to Cyndi Karoly at 2321 Crabtree Blvd., Suite 250, Raleigh, NC, 27604 or Cyndi.Karoly@ncmail.net by April 13, 2009. The final version of the revised language will become effective upon the effective date of the revised Certifications, of which 60-day notice will be provided, although applicants may choose to apply the flexibility provided in this revised condition prior to that date.

Proposed Stormwater Provisions for Revised 401 General Certifications:

Stormwater Management Program Requirements

- A. *For the North Carolina Department of Transportation (NCDOT), compliance with NCDOT's Individual NPDES permit NCS000250 shall serve to satisfy this condition.*
- B. *All non-NCDOT projects shall be classified as either Low or High Density. Low Density projects do not require the submittal of a Stormwater Management Plan (SMP).*
 - i. **Low Density:** *A development shall be considered Low Density if ALL of the following criteria are met.*
 - a. *The overall site plan, excluding ponds, lakes, rivers (as specified in North Carolina's Schedule of Classifications) and saltwater wetlands (SWL), must contain less than 24% impervious surface area considering both current and future development.*

- b. *All stormwater from the entire site must be transported primarily via vegetated conveyances designed in accordance with the most recent version of the NC DWQ Stormwater BMP Manual.*
 - c. *The project must not include a stormwater collection system (such as piped conveyances) as defined in NCAC 2B .0202.*
 - d. *Stormwater conveyances that discharge to wetlands must discharge at a non-erosive velocity prior to entering the wetland during the peak flow from the ten-year storm.*
 - e. *Any area within the project that has impervious surface area of 24% or greater must be located away from surface waters and drainageways and shall drain to surface waters and drainageways via diffuse flow. Diffuse flow measures must be designed in accordance with the most recent version of the NC DWQ Stormwater BMP Manual.*
- ii. **High Density:** *Projects that do not meet the Low Density criteria described above are considered to be High Density. High Density projects require the submittal and implementation of an SMP to the Division in accordance with the following criteria.*
- a. *The SMP must comply with the version of "Stormwater Management Plan Requirements for Applicants other than the North Carolina Department of Transportation" that is in place on the date of the submittal of the SMP.*
 - b. *All BMPs must be designed in accordance with the version of the NC DWQ Stormwater BMP Manual that is in place on the date of the submittal of the SMP.*
 - c. *High Density projects require the submittal and implementation of an SMP to the DWQ regardless of whether a written authorization is required for this permit*
- iii. **Phased Projects:** *The DWQ will allow SMPs to be phased on a case-by-case basis, with a final SMP required for the current phase and a conceptual SMP for the future phase(s). If the current phase meets the Low Density criteria, but future phase(s) do not meet the Low Density criteria, then an SMP is required for the entire project in accordance with Item (ii) above.*

The stormwater policy document entitled, "Stormwater Management Plan (SMP) Requirements for Applicants Other Than the North Carolina Department of Transportation" is referenced in the existing as well as the proposed new stormwater condition in the General Certifications, and is to be modified to reflect the changes in the stormwater condition in the GC's as well as for greater clarity. This document is posted on the DWQ web site at http://h2o.enr.state.nc.us/ncwetlands/stormwater_managment_plans.html and will become effective May 12, 2009, although applicants may choose to apply the flexibility provided in this document prior to that date.

VI. PUBLIC HEARING - WESTERN WAKE REGIONAL WASTEWATER MANAGEMENT FACILITIES PROJECT, NORTH CAROLINA DIVISION OF WATER QUALITY

PUBLIC NOTICE is hereby given that an application pursuant to Section 401 of the Federal Clean Water Act and Water Quality Commission rules in 15A NCAC 2B .0101, 15A NCAC 2B .0231 and 15A NCAC 2H .0500 has been submitted to the North Carolina Division of Water Quality for the Western Wake Regional Wastewater Management Facilities Project.

The activity for which this Certification is sought is to construct a regional wastewater pumping, conveyance, treatment and discharge project to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County portion of Research Triangle Park, North Carolina.

The public is hereby notified that that the Division of Water Quality will hold a joint public hearing with the U.S. Army Corps of Engineers on Tuesday, April 14, 2009 starting promptly at 6:00 p.m. at the Council Chambers, Apex Town Hall, 73 Hunter Street, Apex, NC, 27502.

The public is invited to comment in writing on the above-mentioned application as well as during the Public Hearing. Speaking times will be limited to two minutes. Written comments related to the application for 401 Water Quality Certification may be forwarded at any time before or after the hearing provided they are received by the Division by regular mail, fax or email no later than close of business (5:00 p.m.) on Thursday, May 14, 2008.

Comments related to the 401 Certification should be sent to the N.C. Division of Water Quality, 401 Oversight Unit, 1650 Mail Service Center, Raleigh, NC, 27699-1650, Attn: Cyndi Karoly (919-733-1721, FAX: 919-733-6893,

Cyndi.Karoly@ncmail.net). Comments may also be mailed to the physical address of the 401 Oversight Unit Central Office at 2321 Crabtree Blvd. Suite 250, Raleigh, NC, 27604-2260.

Copies of the file materials are available at the Central Office during regular business hours (8:00 a.m. to 5:00 p.m.) and may be inspected by the public. File materials may not be removed from any DWQ office, as copy machines are available. A comprehensive web site related to this project and containing most of the file correspondence is also maintained by the U.S. Army Corps of Engineers at <http://www.saw.usace.army.mil/wetlands/Projects/WW-WTP/index.html> .

cc: DWQ Regional Wetland contacts
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