



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Beverly Eaves Perdue  
Governor

Charles Wakild, P.E.  
Director

Dee Freeman  
Secretary

January 12, 2012

TO: 401 Water Quality Certification Mailing List and Other Interested Parties

FROM: Karen Higgins, Wetlands, Buffers and Stormwater Compliance and Permitting Unit *KH*  
Brian Wrenn, Transportation Permitting Unit *BW*

RE: Umbrella Mitigation Banking Instrument (UMBI) Template for Nutrient Offset Mitigation Banks,  
Proposed Water Quality Certification and Isolated and Other non-404 Jurisdictional Wetlands  
and Waters Permit Revisions

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The purpose of this Public Notice is outlined below. This notice is available electronically at  
<http://portal.ncdenr.org/web/wq/swp/ws/401/publicnotices>.

**I. Umbrella Mitigation Banking Instrument (UMBI) Template for Nutrient Offset Mitigation Banks**

The DWQ has developed an Umbrella Mitigation Banking Instrument (UMBI) template to expedite the review and approval process of private mitigation bankers desiring to offer nutrient offset and buffer mitigation in North Carolina. In the past, this review and approval process has taken up to six months. DWQ has worked with DENR Legal Counsel to develop this template for the use of private mitigation bankers. The template, when unmodified, will promote consistency, fairness, and upfront expectations that are well-balanced between all the parties involved. DWQ is planning an informational meeting to discuss the content of this UMBI template as well as future templates for sometime in early February 2012. A copy of the UMBI template is available on our website at: <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/mitigation/memos>. Please contact Katie Merritt if you have any questions at 919-807-6371 or [katie.merritt@ncdenr.gov](mailto:katie.merritt@ncdenr.gov).

**II. Proposed Water Quality Certification and Isolated and Other non-404 Jurisdictional Wetlands and Waters Permit Revisions**

The Division of Water Quality (DWQ) invites public comment on proposed Water Quality Certification (WQC) revisions and proposed Isolated and Other non-404 Jurisdictional Wetlands and Waters Permit (IWP) revisions as presented on our website at: <http://portal.ncdenr.org/web/wq/swp/ws/401/publicnotices>. The complete text of each revised General Certification and the revised IWP is available on our web site at [http://portal.ncdenr.org/web/wq/2012\\_draft\\_gcs](http://portal.ncdenr.org/web/wq/2012_draft_gcs). The file names are shown as the existing GC number suffixed by REV (revision). For example, the proposed changes to GC3821 will be listed as a hyperlink to the document named "3821REV." Within each draft revised GC and IWP, items to be deleted are shown in color and struck through, and items to be added are shown in color and underlined. If you lack internet access, please contact Ms. Beverly Strickland at 919-807-6350 to request copies of the specific draft revised GC's you would like to review.

Persons wishing to comment are invited to submit their comments in writing to the address below. All comments **received by DWQ by close of business (5:00 p.m.) on February 13, 2012** will be

Wetlands, Buffers, Stormwater -- Compliance and Permitting Unit  
1650 Mail Service Center, Raleigh, North Carolina 27699-1650  
Location: 512 N. Salisbury St. Raleigh, North Carolina 27604  
Phone: 919-807-6300 \ FAX: 919-807-6494  
Internet: [www.ncwaterquality.org](http://www.ncwaterquality.org)

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considered in the final determination regarding permit actions. Written comments will be accepted by regular mail or email as indicated below. All comments and requests should reference the specific WQC number and revision(s).

Please direct questions or comments to: Karen Higgins or Ian McMillan, NC Division of Water Quality, 1650 Mail Service Center, Raleigh, NC 27699-1650, Telephone: 919-807-6300, [karen.higgins@ncdenr.gov](mailto:karen.higgins@ncdenr.gov) or [ian.mcmillan@ncdenr.gov](mailto:ian.mcmillan@ncdenr.gov).

- A. The US Army Corps of Engineers District Engineer, Wilmington District proposes to renew the following twelve Regional General Permits. DWQ is therefore required to renew the General Certifications corresponding to these Regional General Permits. No changes to these General Certifications, apart from the generic changes proposed for most of the GC's as discussed in this correspondence, are proposed for these GC's unless otherwise noted below:

<b>Corps' Regional General Permit Number</b>	<b>DWQ General Certification Number</b>
198200030 Public Utility and TVA Lakes	3693
198200031 NCDOT Bridges	3820
198000048 Emergency Activities Ocean Beaches	3703
197800056 Piers, Mooring Piles, Breakwaters	3687
198200079 Lakes and Reservoirs, Wilmington	3693
197800080 Bulkheads and other Shoreline Stabilization	3693
197800125 Boat Ramp Facilities	3687
198500194 Artificial Reefs	3694
198200277 Work in Manmade Basins and Canals	3698
198000291 NC Coastal Area Management Act	3641 combined with 3642
199200297 Wildlife Management/Firebreaks	3681
199602878 Maintenance Dredging	3698

\* Please note that the US Army Corps of Engineers is involved in a process of revising Regional General Permit 197800031 and DWQ may therefore revise its corresponding GC. Any resultant changes to the corresponding General Certification will be circulated for separate public comment.

- B. GC3641 and GC3642 – These GCs have been combined into one GC. Additionally, this new general certification will not require written authorization when a minor CAMA permit is issued by the Division of Coastal Management (DCM). However, written authorization is required for impacts that trigger a buffer authorization.
- C. The following additional conditions have been edited to be consistent among all General Certifications and the IWP:

➤ **Construction Moratoriums and Coordination**

If activities must occur during periods of high biological activity (i.e. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities.

All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) to lessen impacts on trout, anadromous fish, larval/post-larval fishes and crustaceans, or other aquatic species of concern shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium.

Work within the twenty-five (25) designated trout counties or identified state or federal endangered or threatened species habitat shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

- All applications shall address stormwater management throughout the entire project area per the **401 Stormwater Requirements**, available at <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/swmanagement>.  
[Authority for this condition - 15A NCAC 02H .0506 (b)(5)]
- This certification grants permission to the director, an authorized representative of the Director, or DENR staff, upon the presentation of proper credentials, to enter the property during normal business hours.  
[Authority for this condition – G.S. 143-215.3(a)(2)]
- If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality (HQW), Outstanding Resource (ORW) waters, then the sediment and erosion control requirements contained within *Design Standards in Sensitive Watersheds* (15A NCAC 04B .0124) supercede all other sediment and erosion control requirements.  
[Removed "Trout" waters" as they are not included in DLR's Sensitive Watershed Rules]
- *Construction Stormwater Permit NCG010000*

*An NPDES Construction Stormwater Permit is required for construction projects that disturb one (1) or more acres of land. This Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If your project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements are required. A copy of the general permit (NCG010000) and inspection log sheets may be found at <http://portal.ncdenr.org/web/wq/ws/su/npdessw#tab-w> along with other information.*

*The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their individual NPDES (NCS000250) stormwater permit.*

[This language has been updated to match the new NCG010000 permit]

- *Placement of Culverts and Other Structures in Waters and Wetlands*

*Culverts required for this project shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. Existing stream dimensions (including the cross section dimensions, pattern, and longitudinal profile) must be maintained above and below locations of each culvert.*

*Placement of culverts and other structures in waters and streams must be placed below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than or equal to 48 inches, to allow low flow passage of water and aquatic life.*

*When topographic constraints indicate culvert slopes of greater than 5%, culvert burial is not required provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (rock ladders, crossvanes, etc). Notification to the Division including supporting documentation to include a location map of the culvert, culvert profile drawings, and slope calculations shall be provided to the Division 60 days prior to the installation of the culvert.*

*When bedrock is present in culvert locations, culvert burial is not required provided that there is sufficient documentation of the presence of bedrock. Notification to the Division including supporting documentation such as, but not limited to, a location map of the culvert, geotechnical reports, photographs, etc shall be provided to the Division a minimum of 60 days prior to the installation of the culvert. If bedrock is discovered during construction then the Division shall be notified by phone or email within 24 hours of discovery.*

*If other site-specific topographic constraints preclude the ability to bury the culverts as described above and/or it can be demonstrated that burying the culvert would result in destabilization of the channel, then exceptions to this condition require application submittal to, and written approval by, the Division of Water Quality, regardless of the total impacts to streams or wetlands from the project.*

*Installation of culverts in wetlands must ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. Additionally, when roadways, causeways or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges must be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.*

*The establishment of native, woody vegetation and other soft stream bank stabilization techniques must be used where practicable instead of riprap or other bank hardening methods.*

*[Condition has been updated such that no written approval is required if the applicant is unable to bury a culvert due to the presence of bedrock or when the slope greater than five percent]*

- *All temporary fill and culverts shall be removed and the impacted area returned to natural conditions within 60 days of the determination that the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross sectional dimensions, planform pattern, and longitudinal bed and bed profile, and the various sites shall be stabilized with natural woody vegetation (except for the approved maintenance areas) and restored to prevent erosion.*
- *Any riprap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All rip-rap shall be buried and/or "keyed in" such that the original stream elevation and streambank contours are restored and maintained. Placement of rip-rap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area.*
- *Any rip-rap used for stream stabilization shall be of a size and density so as not to be able to be carried off by wave or current action, or stream flows, and consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures.*
- *All temporary pipes/culverts/riprap pads etc, shall be installed in all streams as outlined in the*

*most recent edition of the North Carolina Sediment and Erosion Control Planning and Design Manual or the North Carolina Surface Mining Manual so as not to restrict stream flow or cause dis-equilibrium during use of this General Certification.*

- *Additional site-specific conditions, including monitoring and/or modeling requirements, may be added to the written approval letter for projects proposed under this Water Quality Certification in order to ensure compliance with all applicable water quality and effluent standards.*

*[Authority for this condition – (d) in Section 401 of the federal Clean Water Act]*

- *This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide and/or Regional General Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification.*

*[No longer will expire after three (3) years; expiration directly linked to federal permit.]*

- *Compensatory Mitigation*

*In accordance with 15A NCAC 02H .0506 (h), compensatory mitigation may be required for losses of equal to or greater than 150 linear feet of streams (intermittent and perennial) and/or equal to or greater than one (1) acre of wetlands. For linear public transportation projects, impacts equal to or exceeding 150 linear feet per stream shall require mitigation.*

*Buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for buffer impacts resulting from activities classified as "Allowable with Mitigation" within the "Table of Uses" section of the Buffer Rules or require a variance under the Buffer Rules.*

*A determination of buffer, wetland and stream mitigation requirements shall be made for any General Water Quality Certification for this Nationwide and/or Regional General Permit. Design and monitoring protocols shall follow the US Army Corps of Engineers Wilmington District Stream Mitigation Guidelines (April 2003), or its subsequent updates. Compensatory mitigation plans shall be submitted for written Division approval as required in those protocols. The mitigation plan must be implemented and/or constructed before any impacts occur on site. Alternatively, the Division will accept payment into an in-lieu fee program or a mitigation bank. In these cases, proof of payment shall be provided to the Division before any impacts occur on site*

*[Clarified that mitigation must be implemented and/or constructed before any impacts occur on site. This will provide consistency among Water Quality Certifications issued throughout the state.]*

- *Non-compliance with or violation of the conditions herein set forth by a specific fill project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.*

*[Edited "shall result in revocation" to "may result in revocation"]*

- *Activities that require written approval:*

*Any stream relocation.*

*[This was embedded within many of the GCs; now it's included at the beginning.]*

*Any impacts to streams and/or buffers in the Neuse, Tar-Pamlico, Randleman, Jordan, Goose Creek, and Catawba River Basins (or any other basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) unless the activities are listed as "EXEMPT" from these Rules or a Buffer Authorization Certificate is issued through DCM*

*delegation for "ALLOWABLE" activities.*

[Changed the written authorization thresholds such that written authorization will not be required when a buffer authorization is issued by DCM]

*Any impact associated with a Notice of Violation or enforcement action for violation(s) of DWQ Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), DWQ Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200)*

[Edited this language to match the Pre-Construction Notification Form]

- D. GC3685 Emergency Watershed Protection and Rehabilitation (corresponds to Nationwide 37, NW37), will be revised to include natural disasters, specifically hurricanes and tornados. This revised GC will include the following conditions:
- a. All work must be conducted "in the dry" condition will be removed.
  - b. Most impacts to surface waters following natural disasters are temporary and therefore will likely not require mitigation.
  - c. Clarification of where temporary debris may placed.
  - d. Clarification of what material may be used for bank stabilization and how that material can be placed.
  - e. Clarification of when dredging cannot occur.
  - f. Remove the condition from GC3685 holding "contractees" responsible for inspection and compliance.
  - g. Remove the condition stating that DWQ will periodically inspect the site and that non-compliance will stop work. DWQ cannot commit to inspecting any site at a specified frequency for this GC and DWQ does not have the authority to "stop work".
- E. The following changes, additions, or corrections are proposed only for the specific General Certifications itemized below:
- For GC3821 and the Isolated and other Non-404 Wetland Permit (IWP), DWQ proposes to revise some of the criteria that triggers written authorization from DWQ:

*Activities meeting any one (1) of the following thresholds or circumstances require written approval for a 401 Water Quality Certification from the Division of Water Quality (the "Division"):*

- a. *Any impacts to streams involving excavation or dredging; or*
- b. *Total stream impacts within the project boundaries equal to or greater than 150 linear feet of intermittent and/or perennial stream, including temporary and/or permanent impacts; or*
- c. *Any stream relocation; or*
- d. *Any impact associated with a high density project (as defined in Item (A)(iv) of the 401 Stormwater Requirements) that is not subject to either a state stormwater program (such as, but not limited to, Coastal Counties, HQW, ORW or state-implemented Phase II NPDES) or a certified community's stormwater program; or*
- e. *Temporary or permanent impacts equal to or greater than one-tenth (1/10) acre of wetlands or open waters; or*
- f. *Any impacts to wetlands adjacent to waters designated as: ORW, SA, WS-I, WS-II, or Trout, or wetlands contiguous to waters designated as a North Carolina or National Wild and Scenic River; or*
- g. *Any impacts to coastal wetlands [15A NCAC 07H .0205], or Unique Wetlands (UWL) [15A NCAC 02H .0506]; or*
- h. *Any impact associated with or a Notice of Violation or an enforcement action for violation(s) of DWQ Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), DWQ Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200); or.*

- i. *Any impacts to streams and buffers in the Neuse, Tar-Pamlico, Randleman, Catawba, Goose Creek and Jordan basins (or any other basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application), unless the activities are listed as "EXEMPT" from these Rules or a Buffer Authorization Certificate is issued through DCM delegation for "ALLOWABLE" activities.*
- DWQ proposes to revise GC3689 to not require written concurrence for in-stream structures if there are equal to or less than three structures per 100 feet of streambank. Additionally, for streambank stabilization using non-natural armoring (i.e., rip-rap), written concurrence is required for impacts of equal to or greater than 150 linear feet.
- DWQ proposes to clarify the requirement for stormwater review and approval as conditions in GC3819, GC3821 and the IWP by requiring written authorization for high-density projects not covered by another state or local government program.
- DWQ proposes inclusion of the following language in several GCs: *"Bridge deck drains shall not discharge directly into the stream. Stormwater shall be directed across the bridge and pre-treated through site-appropriate means (grassed swales, pre-formed scour holes, vegetated buffers, etc.) before entering the stream. Please refer to the most current version of Stormwater Best Management Practices. Exceptions to this condition require written approval by the Division of Water Quality."*
- DWQ proposes to clarify in GC3693 that "floating structures shall not rest permanently on the bottom". Currently, the GC states that "floating structures shall not rest periodically on the bottom".
- DWQ proposes the following in GC3819:
  - a. Remove redundancy among different DWQ programs by proposing to change the requirements for wastewater lines crossing streams to be in accordance with other DWQ design criteria (for gravity sewers and fast-track permitting) instead.
  - b. Clarify the "construction corridor" definition (which must be 40 feet) to include erosion and sediment control measures.
  - c. Require more detailed information when the applicant is proposing restoration of wetland contours. DWQ frequently requests this information in a Request For More Information letter, and therefore, this may avoid having to request this information.
- In GC3695, DWQ proposes to remove the "work in the dry" condition for gold mining, since this is unreasonable and impractical for recreational miners.
- In the Isolated and other Non-404 Wetland Permit (IWP), DWQ proposes to allow coverage under the General Permit for up to 300 linear feet of isolated stream impacts, instead of the current 250 linear feet.

cc: DWQ Wetland Regional Contacts  
 Cyndi Karoly  
 Matt Matthews  
 Chuck Wakild  
 Susan Massengale