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Director



NORTH CAROLINA
Environmental Quality

PUBLIC NOTICE

DATE: September 20, 2023

TO: DEQ-DWR-Wetlands-Public Listserv

FROM: Richard E. Rogers, Jr., Director

RE: Wetland and 401 Certification Updates

The purpose of this Public Notice is outlined below. This notice is available electronically at <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-public-notices>.

Wetlands and the NC Farm Act:

On June 27, 2023, the North Carolina General Assembly enacted [the 2023 NC Farm Act](#) which includes a revised definition of wetlands found in 15A NCAC 2B 0202. The Division of Water Resources (DWR) is implementing the amended definition of wetlands as set forth in the new law.

- Where the U.S. Army Corps of Engineers (USACE) and the applicant agree that all features on the property are potentially jurisdictional, DWR is moving forward with processing those 401 applications as they are submitted.
- Where there are questions regarding the jurisdictional status of the wetlands, DWR understands that USACE is evaluating those wetlands under the [new federal Waters of the US \(WOTUS\) rule](#). DWR will move forward on these projects once it has a decision from USACE.
- Isolated wetlands and non-jurisdictional wetland permits will not be necessary for properties that have received Approved Jurisdictional Determinations (AJDs) confirming the wetlands on the property are not under the WOTUS rule.
- Additional information regarding the Department's interpretation of the 2023 Farm Act was recently presented to the Environmental Management Commission and is available [here](#).

Federal 401 Certification Rule:

On Sept. 14, 2023, the U.S. Environmental Protection Agency (EPA) announced [a new rule on 401 Certifications](#), which will take effect 60 days from the date it is published in the Federal Register. Once the rule is published, DWR will be able to provide notice of when the rule will take effect. DWR is currently evaluating its 401 Certification procedures in light of the new rule to see what changes need to be made and will provide updates when appropriate.

Please contact the [DWR 401 & Buffer Permitting Branch](#) with any questions.



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