

Water Quality - 401 Certification



PAT MCCRORY

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September 13, 2016

Mr. Scott McLendon, Chief
Department of the Army
Wilmington District, Corps of Engineers
69 Darlington Avenue
Wilmington, NC 28403-1343

Subject: Water Quality Certifications
Regional General Permits Reissuance

Dear Mr. McLendon:

Thank you for your letter summarizing the Regional General Permits (RCPs) reissuance process, itemizing the changes to these permits and requesting water quality certifications. Please refer to the following table for General Water Quality Certifications that correspond to each of the eleven RGP's proposed for reauthorization. Many of these General Certifications (GCs) apply to multiple RGP's as well as Nationwide Permits.

Regional General Permit	General Certification	Revised Description
198200030	3898	Work in waters of lakes and reservoirs
198000048	3908	Emergency activities on ocean beaches
198700056	3883	Piers, docks, boathouses, breakwaters, etc.
198200079	3898	Work in Corps reservoirs
197800080	3885	Bulkheads and riprap
197800125	3883	Boat ramps & associated piers, docks, etc.
198500194	3887	Artificial reefs
198200277	3894	Work in manmade basin and canals
198000291	3900	Work in coastal counties (CAMA)
199200297	3901	Forest management and wildfire control
199602878	3894	Work in Federally authorized projects

Each of these GCs have the following statement at the end of the history note. "This General Certification is rescinded when the Corps of Engineers reauthorizes any of these Nationwide or Regional Permits or when deemed appropriate by the Director of the Division of Water Quality." The Division of Water Quality is now the Division of Water Resources. As in previous RGPs reauthorizations, this statement extends the date of the GC as long as needed if we determine that the existing GC continues to meet our needs. We have reviewed the changes to the RGPs proposed for reauthorization and determined the existing GCs would continue to serve our needs as well as the regulated community. The Division will not revise the current GCs at this time, but will be revising them as part of the Nationwide Permit renewal process early next year.

You can find copies of these GCs at the following link:

<http://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-general-certifications>. Please feel free to Karen Higgins at 919-807-6360 or karen.higgins@ncdenr.gov or Jennifer Burdette at 919-807-6364 or jennifer.burdette@ncdenr.gov if you have any questions.

Sincerely,



Jeff Poupart, Chief
Water Quality Permitting Section

JOP/jab

cc: Karen Higgins, NCDWR, 401 & Buffer Permitting Branch (via karen.higgins@ncdenr.gov)
Amy Chapman, NCDWR, Transportation Permitting Branch (via amy.chapman@ncdenr.gov)
Jennifer Burdette, NCDWR, 401 & Buffer Permitting Branch (via jennifer.burdette@ncdenr.gov)
Sue Homewood, NCDWR, Winston-Salem Regional Office (via sue.homewood@ncdenr.gov)
Ronnie Smith, USACE (via Ronnie.D.Smith@usace.army.mil)

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**GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR U.S. ARMY CORPS OF
ENGINEERS REGIONAL PERMIT NUMBER 198200030 (TVA, OR FERC REGULATED
PUBLIC UTILITIES) AND REGIONAL PERMIT 198200079 (COE LAKE AND RESERVOIR
MAINTENANCE, REPAIR AND CONSTRUCTION ACTIVITIES)
AND RIPARIAN AREA PROTECTION RULES (BUFFER RULES)**

Water Quality Certification Number 3898 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15A NCAC 02H .0500 and 15A NCAC 02B .0200 for the discharge of fill material to waters and wetland areas as described in the Wilmington District's Regional (General) Permit Number 198200030 and Regional Permit Number 198200079 and for the Riparian Area Protection Rules (Buffer Rules) in 15A NCAC 02B .0200.

The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

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) Activities that result in fill, dredging or excavation of waters or wetlands below the normal high water level; or
- b) Any impact associated with 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
- c) Any impacts to streams and/or buffers in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan or Goose Creek Watersheds (or any other basin or watershed 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 N.C. Division of Coastal Management (DCM) delegation for "ALLOWABLE" activities.

In accordance with North Carolina General Statute 143-215.3D(e), written approval for a 401 Water Quality General Certification must include the appropriate fee. If a project also requires a CAMA Permit, then one payment to both agencies shall be submitted and will be the higher of the two fees.

Activities included in this General Certification that do not meet one of the thresholds listed above do not require written approval from the Division as long as they comply with the Conditions of Certification listed below. If any of these Conditions cannot be met, then written approval from the Division is required.

Conditions of Certification:

1. No Impacts Beyond those Authorized in the Written Approval or Beyond the Threshold of Use of this Certification

No waste, spoil, solids, or fill of any kind shall occur in wetlands, waters, or riparian areas beyond the footprint of the impacts depicted in the Pre-Construction Notification, as authorized in the written approval from the Division or beyond the thresholds established for use of this Certification without written authorization, including incidental impacts. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices shall be performed so that no violations of state water quality standards, statutes, or rules occur. Approved plans and

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specifications for this project are incorporated by reference and are enforceable parts of this permit.

2. Standard Erosion and Sediment Control Practices

Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices and if applicable, comply with the specific conditions and requirements of the NPDES Construction Stormwater Permit issued to the site:

- a. Design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
- b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
- c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
- d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
- e. If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality (HQW), or Outstanding Resource (ORW) waters, then the sedimentation and erosion control designs must comply with the requirements set forth in 15A NCAC 04B .0124, *Design Standards in Sensitive Watersheds*.

3. No Sediment and Erosion Control Measures in Wetlands or Waters

Sediment and erosion control measures shall not be placed in wetlands or waters. Exceptions to this condition require application submittal to and written approval by the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two (2) months of the date that the Division of Land Resources (DLR) or locally delegated program has released the specific area within the project.

4. 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 is required. A copy of the general permit (NCG010000), inspection log sheets, and other information may be found at <http://portal.ncdenr.org/web/wq/ws/su/npdessw#tab-w>.

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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.

5. 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.

6. Work in the Dry

All work in or adjacent to stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. Exceptions to this condition require application submittal to and written approval by the Division.

7. Riparian Area Protection (Buffer) Rules

Activities located in the protected riparian areas (whether jurisdictional wetlands or not), within the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan, or Goose Creek Watersheds (or any other basin or watershed with buffer rules) shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 02B .0233, .0259, .0243, .0250, .0267 and .0605, and shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices. All buffer rule requirements, including diffuse flow requirements, must be met.

8. If concrete is used during the construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state due to the potential for elevated pH and possible aquatic life/ fish kills.
9. Rip-rap shall be installed waterward of bulkheads installed in freshwater lakes to ensure protection of aquatic habitat. Construction over wetlands shall be elevated at least three (3) feet above any wetlands, and floating structures shall not rest periodically on the bottom.
10. Piers and boat houses shall be constructed to provide for storage and removal of sewage rather than allowing raw waste or other sewage to be disposed directly into surface waters.
11. Deed notifications or similar mechanisms shall be placed on all retained jurisdictional wetlands, waters, and protective buffers within the project boundaries in order to assure

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compliance for future wetland, water, and buffer impact. These mechanisms shall be put in place at the time of recording of the property or of individual lots, whichever is appropriate. A sample deed notification can be downloaded from the 401/Wetlands Unit web site at <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/apply/forms>. The text of the sample deed notification may be modified as appropriate to suit to a specific project. Documentation of deed notifications shall be provided to the Division upon request.

12. If an environmental document is required under the National or State Environmental Policy Act (NEPA or SEPA), then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse.
13. In the twenty (20) coastal counties, the appropriate DWQ Regional Office must be contacted to determine if Coastal Stormwater Regulations will be required.
14. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.
15. The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If the Division determines that such standards or laws are not being met, including failure to sustain a designated or achieved use, or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, then the Division may reevaluate and modify this General Water Quality Certification.
16. When written authorization is required for use of this certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return the certificate of completion attached to the approval. One copy of the certificate shall be sent to the DWQ Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.
17. 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.
18. 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.

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.

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

The Director of the North Carolina Division of Water Quality may require submission of a formal application for Individual Certification for any project in this category of activity if it is determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or degrade the waters so that existing uses of the wetland or downstream waters are precluded.

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Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: March 19, 2012

DIVISION OF WATER QUALITY

By

A handwritten signature in blue ink, appearing to read "Charles Wakild".

Charles Wakild, P.E.

Director

History Note: Water Quality Certification Number 3898 issued March 19, 2012 replaces WQC Number 3693 issued November 1, 2007; WQC Number 3639 issued March 19, 2007; WQC Number 3492 issued December 31, 2004; and WQC Number 3373 issued March 18, 2002. This General Certification is rescinded when the Corps of Engineers reauthorizes any of the corresponding Nationwide and/or Regional General Permits or when deemed appropriate by the Director of the Division of Water Quality.

No CZMA Consistency
Required