



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

February 15, 2013

MEMORANDUM TO: Amy Chapman, NC Division of Water Quality

FROM: Gregory J. Thorpe, Ph.D., Manager
Project Development and Environmental Analysis Unit

Don Lee, P.E., Manager
Roadside Environmental Unit

SUBJECT: Comments on Draft Section 401 Water Quality Certification 3898
(projects eligible for new Section 404 RGP).

The NCDOT appreciates the DWQ's work on this revised Water Quality Certification (WQC), as well as the early comment opportunity. We understand that this WQC is designed to complement the proposed Regional General Permit, drafted to streamline the paperwork associated with permit application and permit issuance. The proposed RGP allows for non-written permitting for road projects incurring minimal impacts. Under the current permit process for RGPs, there is no mechanism for non-written WQC; effectively negating the benefit and therefore NCDOT's use of the RGP. A corresponding WQC, which is as streamlined as the proposed RGP, has the potential to reduce paperwork and create a significant time savings for both NCDOT and the agencies.

Comments below in the text of the memo are from the Natural Environment Section (NES) of PDEA. Please contact Elizabeth Lusk at (919) 707-6133 or ellusk@ncdot.gov with questions.

Comments from the Roadside Environment Unit are attached as direct comments on the WQC. Please contact Ken Pace at (919) 707-2927 or kpace@ncdot.gov with questions.

NES Comments:

Several **Activities** which require **Written Approval** are more restrictive than the Corps' criteria. In order to bring these criteria in alignment and avoid overly restricting the use of the non-written approval component, we suggest the following revisions:

Combine a. and b. to read:

Permanent per stream impacts equal to or greater than 300 feet.

This brings the parameters in alignment with the RGP that this WQC is intended to complement.

c. Any permanent stream relocation, unless relocation is necessitated by placement of fill, in which case the permanent fill impact would be subject to the 300-foot threshold. Otherwise, this condition would preclude all but a few of the projects in the western part of the state.

e. ~~Temporary and/or~~ Permanent impacts \geq half acre of wetlands

f. ...impacts to wetlands adjacent to ...: ORW, SA, WSI, WS-II or Trout, etc. The Corps' wetland impact threshold is based solely on impact amount, rather than water classification of adjacent waters. While these waters are worthy of additional protection, we note that they are protected under the NCAC Design Standards in Sensitive Watersheds (condition e. of this WQC). Therefore, we believe this criterion, as currently written in the draft WQC, would unnecessarily preclude many projects from use of the non-written WQC and suggest eliminating this item.

Conditions of Certification:

2.a. NCDOT contracts stipulate that road construction contractors identify and obtain their own permits for borrow and waste sites. Therefore, we suggest striking the last clause of this condition, ...~~including contractor owned or leased borrow pits associated with the project.~~

5. Moratoriums and Coordination

- Please define "high biological activity".
- It is not clear which species are targeted. Please clarify that this only applies to activities of Federally Threatened or Endangered species.,.
- Clarify the zone of applicability of this condition. (What is the distance beyond which this condition does not apply?)
- Clarify whether the "larval/post-larval fishes" moratorium implies our current PNA moratorium. If so, please replace with PNA to be consistent with the Corps' permit and other permits. If this is a new criterion for larval/post larval fish being implemented solely through this WQC, we recommend eliminating the criterion from this WQC and initiating rulemaking to establish the new larval/post larval fish requirement through the appropriate rules within the NCAC.
- Define "other aquatic species of concern". It is not clear what species are targeted.
- Overall comment to this condition-It is not clear what the process is for establishing the various moratoria and for ensuring that the moratoria are necessary to protect water quality.

10. Regarding the last sentence: *In these cases, proof of payment shall be provided to the Division before any impacts occur on site.*

This statement is not applicable to NCDOT. NCDOT makes quarterly payments to EEP, rather than project by project payments.

19. Most of our projects require only a CE or PCE, which categorically excludes the project from further study. Therefore, the CE/PCE is the final document. Please add CE/PCE to the list of environmental documents.

Thank you for the opportunity to comment.

Cc:

Phil Harris, Natural Environment Section

Randy Griffin, P.E., NES Engineering Group

Elizabeth Lusk, NES Project Management Group

Leilani Paugh, NES Onsite Mitigation Group

Neil Medlin, NES Biological Surveys Group

Ken Pace, P.E., Roadside Environmental Unit

David Chang, Ph.D., P.E., Hydraulics Unit

Jay Bennett, P.E., Roadway Design Unit

Amy Simes, P.E., NCDENR

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Water Quality Certification No. 3898

GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR U.S. ARMY CORPS OF ENGINEERS REGIONAL GENERAL PERMIT [tbd] (WORK ASSOCIATED WITH THE MAINTENANCE, REPAIR AND CONSTRUCTION OF PROJECTS CONDUCTED BY NCDOT OR OTHER GOVERNMENT AGENCIES) 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 adjacent wetland areas or to wetland areas that are not a part of the surface tributary system to interstate waters or navigable waters of the United States as described in 33 CFR 330 Appendix A (B) (18, 29, 39, 41, 42, 44, and 46) of the Corps of Engineers regulations 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 with temporary and/or permanent impacts equal to or greater than a tenth (1/10) of an acre of wetlands are required to submit a courtesy copy application to the Division of Water Quality.

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 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 a WS-I, WS-II, WS-III, WS-IV, or state-implemented Phase II NPDES) or a certified community's stormwater program; or
- e. Temporary and/or permanent impacts equal to or greater than a half (0.5) acre of wetlands; 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 a Notice of Violation or an enforcement action for violation(s) of Division Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), Division Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200); or
- i. 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

Comment [MRL1]: Clarification needed: Even if we DO NOT have to notify the Corps, we have to send a courtesy copy to DWQ for any temporary and/or permanent impacts equal to or greater than a tenth of an acre of wetlands? And also, do we send a copy of the project plans for ALL projects to DWQ two weeks prior to construction if written approval is not required?

Comment [MRL2]: NCDOT projects are not high nor low density.

Comment [MRL3]: As with the new RGP from the Corps, this requirement will exclude many NCDOT projects, especially in the eastern and western Divisions.

Comment [MRL4]: This requirement will exclude many NCDOT projects, especially in the central and eastern Divisions. Could there be a modified riparian buffer notification process similar to the Low Impact Bridge process?

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CAMA Permit, then one payment covering fees for 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. However, the applicant must submit a copy of the project plans to the Division two weeks prior to construction if written approval is not required.

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 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 **in compliance with the North Carolina Sedimentation Pollution Control Act, including contractor owned or leased borrow pits associated with the project. Eliminate redundant statements of contractor owned or leased borrow pits. Everything is covered with the statement "borrow sites, and waste pile (spoil)".**
- ~~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*. Eliminate condition since it is already stated above in condition (a.) and that the Sedimentation Pollution Control Act will cover 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. Eliminate condition since it is already stated above in condition (a.) and that the Sedimentation Pollution Control Act will cover the North Carolina Surface Mining Manual.~~

Comment [MRL5]: What is the purpose of the requirement to submit a copy of the project plans two weeks prior to construction? This is more stringent than the COE GP. We suggest that this be a monthly or quarterly notification.

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- 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. In order to remain compliant with the SPCA and NCG010000 it requires our contractors to be capable of responding to Erosion Control needs and stabilization efforts in a timely manner. Current contract specifications will cover this issue without the need for materials to remain on all projects. NCDOT currently requires large projects to maintain sufficient materials on site for EC and stabilization issues.
- 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. NCDOT Design Standards in Sensitive Watersheds.

The Department of Transportation will adhere to the following guidelines when operating within sensitive watersheds.

A. Erosion and sedimentation control measures, structures, and devices within a sensitive watershed shall be so planned, designed and constructed to provide protection from the runoff of the 25 year storm which produces the maximum peak rate of runoff as calculated according to procedures in the "Erosion and Sediment Control Planning and Design Manual" or according to procedures adopted by the North Carolina Department of Transportation

B. Sediment basins within sensitive watershed shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff of the two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the "Erosion and Sediment Control Planning and Design Manual" or according to procedures adopted by the North Carolina Department of Transportation.

C. Erosion and sedimentation control measures will include the use of flocculants in appropriate areas to improve the settling of sediment particles and reduce turbidity levels in construction runoff. The use of flocculants will conform to Division of Water Quality approved product list.

D. Newly constructed open channels in sensitive watersheds shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

E. Provide ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a sensitive watershed within 7 calendar days following completion of construction or development.

NCDOT Design Standards covers more than 15A NCAC 04B .0124, Design Standards in Sensitive Watersheds.

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3. ~~No Sediment and Erosion Control Measures in Wetlands or Waters~~ **Contradicts language below.**

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 Energy, Mining and Land Resources (DEMLR) 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>.

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.

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Projects in eastern NC may not be able to meet this condition due to tidal activity or high water tables. Propose language that would allow for special cases to be coordinated with DWQ.

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. 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.

10. 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 activities classified as "Allowable with Mitigation" or "Prohibited" within the Table of Uses.

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 to the Division for written 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.

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11. Relocated stream designs should include the same dimensions, patterns, and profiles as the existing channel (or a stable reference reach if the existing channel is unstable), to the maximum extent practical. The new channel should be constructed in the dry and water shall not be turned into the new channel until the banks are stabilized. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30-foot wide wooded and an adjacent 20-foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practical. A transitional phase incorporating appropriate erosion control matting materials and seedling establishment is allowable, however matting that incorporates plastic mesh and/or plastic twine shall not be used in wetlands, riparian buffers or floodplains as recommended by the North Carolina Sediment and Erosion Control Manual. Rip-rap, A-Jacks, concrete, gabions or other hard structures may be allowed if it is necessary to maintain the physical integrity of the stream; however, the applicant must provide written justification and any calculations used to determine the extent of rip-rap coverage. Please note that if the stream relocation is conducted as a stream restoration as defined in the US Army Corps of Engineers Wilmington District, April 2003 *Stream Mitigation Guidelines* (or its subsequent updates), the restored length may be used as compensatory mitigation for the impacts resulting from the relocation. Prior to any water release into the newly restored stream, the Division must be notified and may inspect if NCDOT is requesting stream restoration credit.

12. Stormwater Management Plan Requirements

All applications shall address stormwater management throughout the entire project area per the 401 Stormwater Requirements, referenced herein as "**Attachment A**" at the end of this Certification

13. 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 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 (rock ladders, crossvanes, etc) and aquatic life movement/ connectivity has been provided when possible. 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.

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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.

14. 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, plan form 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. The use of geotextile fabric under temporary fill is strongly encouraged.
15. 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.
16. 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.
17. 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, current action, or stream flow 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.
18. A one-time application of fertilizer to re-establish vegetation is allowed in disturbed areas including riparian buffers, but is restricted to no closer than 10 feet from top of bank of streams. Any fertilizer application must comply with all other Federal, State and Local regulations. I assume this will only be on small projects and not larger ones that may need multiple applications over several years during the life of construction to establish vegetation.
19. 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 approved by the State Clearinghouse.

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20. In the twenty (20) coastal counties, the appropriate Division Regional Office must be contacted to determine if Coastal Stormwater Regulations will be required.
21. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.
22. 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.
23. 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 Division Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.
24. 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.
25. 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 United States Army Corps of Engineer 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.

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: **[tbd]**

DIVISION OF WATER QUALITY

By

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Water Quality Certification No. 3898

Charles Wakild, P.E.
Director

Attachment A: 401 Stormwater Requirements

The requirements listed below shall be implemented in order to comply with Condition 12 of this General Certification. For the North Carolina Department of Transportation, compliance with NCDOT's Individual NPDES permit NCS000250 shall serve to satisfy the 401 and Isolated Wetland Stormwater Requirements.¹

- A. **Design and Implementation Requirements.** All projects, regardless of project area, amount of built-upon area or amount of jurisdictional impact, shall meet the following stormwater design requirements:
- i. **Non-Erosive Discharge to Streams and Wetlands.** Stormwater conveyances that discharge to streams and wetlands must discharge at a non-erosive velocity prior to entering the stream or wetland during the peak flow from the ten-year storm.²
 - ii. **Vegetated Setbacks.** A 30-foot wide vegetated setback must be maintained adjacent to streams, rivers and tidal waters in areas that are not subject to a state Riparian Area Protection Rule or other more stringent vegetated setback requirements. The width of the setback shall be measured horizontally from the normal pool elevation of impounded structures, the top-of-bank of streams and rivers, and the mean high waterline of tidal waters, perpendicular to shoreline. Vegetated setback and filters required by state rules or local governments may be met concurrently with this requirement and may contain coastal, isolated or 404 jurisdictional wetlands. Non-jurisdictional portions of the vegetated setback may be cleared and graded, but must be planted with and maintained in grass or other vegetative or plant material.³ *Since we will be building bridge and other structures adjacent to the jurisdictional areas, I do not see how we could always meet this requirement. I would remove or modify to imply we should try to maintain a 30 foot buffer where practical.*
 - iii. **Construction and Operation.** The stormwater management plan must be constructed and operational before any permanent building or other structure is occupied or utilized at the site. The stormwater management plan, including drainage patterns, must be maintained in perpetuity.⁴
 - iv. **Coordination with Other Stormwater Programs.** Projects that are subject to another Division stormwater program, including (but not limited to) the 20 Coastal Counties, HQW, ORW or state-implemented Phase II NPDES, or a Certified Community's stormwater management program, must be constructed and maintained in compliance with the approved stormwater management plan.⁵
 - v. **Stormwater Design Requirements for Projects Not Covered Under Item (iv).** Projects that are not subject to another Division stormwater program or a Certified Community's stormwater program shall meet all of the following requirements:
 - a. **Low Density.** A site is low density if all the following requirements are met:

Comment [MRL6]: Does NCDOT comply with Attachment A requirements by complying with NPDES Permit NCS000250?

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1. The development has a built upon area of twenty-four percent (24%) or less, considering both current and future development. When determining the amount of built upon area, coastal wetlands shall be included; however, ponds, lakes and rivers as specified in North Carolina's Schedule of Classifications shall be excluded. If a portion of project has a density greater than 24%, the higher density area must be located in an upland area and away from surface waters and drainageways to the maximum extent practicable.⁶
 2. All stormwater runoff from the built upon areas is transported primarily via vegetated conveyances designed in accordance with the most recent version of the *NC DWQ Stormwater Best Management Practices Manual*. Alternative designs may be approved if the applicant can show that the design provides equal or better water quality protection than the practices specified in the manual. The project must not include a stormwater collection system (such as piped conveyances) as defined in 15A NCAC 02B .0202(60).⁷
- b. **High Density.** Projects that do not meet the Low Density requirements shall meet the following requirements:
1. Stormwater runoff from the entire site must be treated by structural stormwater controls (BMPs) that are designed to remove eighty-five percent (85%) of the average annual amount of Total Suspended Solids (TSS). Stormwater runoff that drains directly to Nutrient Sensitive Waters (NSW) must also be treated to remove thirty percent (30%) of Total Nitrogen (TN) and Total Phosphorus (TP).⁸
 2. All BMPs must be designed in accordance with the version of the *NC DWQ Stormwater Best Management Practices Manual* that is in place on the date of stormwater management plan submittal. Alternative designs may be approved if the applicant can show that the design provides equal or better water quality protection than the practices specified in the manual.⁹
 3. The Division may add specific stormwater management requirements on a case-by-case basis in order to ensure that a proposed activity will not violate water quality standards.¹⁰
 4. The Division may approve Low Impact Developments (LIDs) that meet the guidance set forth in the *Low Impact Development: A Guidebook for North Carolina*.¹¹
 5. Proposed new development undertaken by a local government solely as a public road project shall follow the requirements of the NC DOT BMP Toolbox rather than Items (1)-(4) above.¹²
- B. **Submittal Requirements.** The submittal requirements listed below apply only to projects that require written authorization as indicated in the applicable General Certification as well as projects that require an Isolated Wetlands Permit. **Any required documentation shall be sent to the Transportation Permitting Unit at 1650 Mail Service Center, Raleigh, NC 27699-1650.**
- i. **Projects that are Subject to Another Division Stormwater Program:** If the project is subject to another Division stormwater program, such as the 20 Coastal Counties, HQW, ORW or state-implemented Phase II NPDES, then the applicant shall submit a copy of the stormwater approval letter before any impacts occur on site.¹³

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- ii. **Projects that are Subject to a Certified Community's Stormwater Program.** If the project is subject to a certified local government's stormwater program, then the applicant shall submit one set of approved stormwater management plan details and calculations with documentation of the local government's approval before any impacts occur on site.⁵
- iii. **Projects Not Covered Under Items (i) or (ii).** If the project is not subject to another Division Stormwater Program or a Certified Community's stormwater program, then it shall be reviewed and approved by the Division through the Water Quality Certification authorization process.
 - a. **Low Density.** For low density projects, the applicant shall submit two copies of the Division Low Density Supplement Form with all required items.¹³
 - b. **High Density.** For high density projects, the applicant shall submit two copies of a Division BMP Supplement Form and all required items at the specified scales for each BMP that is proposed.¹³
- iv. **Phasing.** Stormwater management plans may be phased on a case-by-case basis, with the submittal of a final stormwater management plan per Items (i)-(iii) above required for the current phase and a conceptual stormwater management plan for the future phase(s). The stormwater management plan for each future phase must be approved by the appropriate entity before construction of that phase is commenced. The approved stormwater management plan for each future phase must be constructed and operational before any permanent building or other structure associated with that phase is occupied.¹⁴
- v. **Stormwater Management Plan Modifications.** The stormwater management plan may not be modified without prior written authorization from the entity that approved the plan. If the project is within a Certified Community, then the applicant shall submit one set of approved stormwater management plan details and calculations with documentation of the local government's approval for record-keeping purposes. If the project is subject to Division review, then the applicant shall submit two copies of the appropriate Supplement Forms per Item (iii) above for any BMPs that have been modified for Division's review and approval.¹⁵

¹ The stormwater requirement for 401 applications is codified in 15A NCAC 02H .0506(b)(5) and (c)(5).

² Non erosive discharge rates are required in SL 2008-211§2(b)(1). The 10-year design storm standard is codified in 15A NCAC 02H .1008(f)(2) and .1008(g)(1).

³ 30-foot vegetated setbacks are required in SL 2006-246§9(d), SL 2008-211§2(b), 15A NCAC 02H .1006(2)(c) and .1007(1)(a).

⁴ Construction and maintenance of the stormwater plan is necessary to satisfy 15A NCAC 02H .0506(b)(5).

⁵ Conveys application procedure to streamline the permitting process and reduce any unnecessary duplication in the review of stormwater management plans.

⁶ Low density built upon area thresholds are set in SL 2006-246§9(c) and SL 2008-211§2(b).

⁷ The requirement for low density development to use vegetated conveyances is codified in SL 2006-246§9(c), SL 2008-211§2(b), 15A NCAC 02H .1006(2)(b) and .1007(1)(a). The Stormwater BMP Manual is also referenced in 15A NCAC 02B .0265(3)(a) and .0277(4)(e).

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- ⁸ 85% TSS removal is required in SL 2006-246§9(d), SL 2008-211§2(b), 15A NCAC 02H .1006(2)(c), 15A NCAC 02H .1007(1)(a). The 30% TN and TP removal requirements for NSW waters are set forth in 15A NCAC 02B .0232, 15A NCAC 02B .0257(a)(1), 15A NCAC 02B .0265(3)(a) and 15A NCAC 02B .0277(4).
- ⁹ The Stormwater BMP Manual is also referenced in 15A NCAC 02B .0265(3)(a) and .0277(4)(e).
- ¹⁰ The requirement for the Division to ensure that water quality standards are protected before issuing a 401 certification is codified in 15A NCAC 02H .0506.
- ¹¹ The LID Toolbox is also referenced in 15A NCAC 02B .0277(4)(g).
- ¹² The term “public road project” is defined in 15A NCAC 02B .0265(3)(a).
- ¹³ Conveys application procedure to streamline the permitting process.
- ¹⁴ Phased development is addressed as a “common plan of development” in 15A NCAC 02H .1003(3).
- ¹⁵ Procedures for modifying stormwater plans are set forth in 15A NCAC 02H .1011.

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