



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

June 15, 2004

MEMORANDUM TO: Mr. M. L. Holder, P.E.  
Division 12 Engineer

FROM: Philip S. Harris, III, P.E., Manager *Malvander*  
*Jan* Office of the Natural Environment  
Project Development and  
Environmental Analysis Branch

SUBJECT: Catawba County, New-Conover Bypass; State Project No.  
8.1792401; Federal Aid Project No. MA-STP-16(2);  
TIP U-2404A

Attached is the U. S. Army Corps of Engineers Permit Modification and the general conditions for the DWQ 401 Water Quality Certification for the above referenced project.

PSH/ma

Attachment

cc: Mr. Art McMillan, P.E.  
Mr. Omar Sultan  
Mr. Jay Bennett, P.E.  
Mr. David Chang, P.E.  
Mr. Randy Garris, P.E.  
Mr. Greg Perfetti, P.E.  
Mr. Mark Staley  
Mr. John F. Sullivan, III, FHWA  
Ms. Trish Simon, Division 12 DEO

**MAILING ADDRESS:**  
NC DEPARTMENT OF TRANSPORTATION  
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS  
1598 MAIL SERVICE CENTER  
RALEIGH NC 27699-1598

TELEPHONE: 919-733-3141  
FAX: 919-733-9794  
WEBSITE: [WWW.DOT.ORG](http://WWW.DOT.ORG)

**LOCATION:**  
TRANSPORTATION BUILDING  
1 SOUTH WILMINGTON STREET  
RALEIGH NC

## PROJECT COMMITMENTS

Newton-Conover Bypass  
Catawba County  
From NC 16 to SR 1739  
Federal Aid Project No. MA-STP-16(2)  
State Project No. 8.1792401  
T.I.P. No. U-2404A

In addition to the standard Individual Permit Conditions, Section 404 Only Conditions, Regional Conditions, State Consistency Conditions, General Certification Conditions, the Section 401 Conditions of Certification and Best Management Practices for Protection of Surface Waters, the following Environmental Commitments were developed through Project Development and Design and have been agreed to by NCDOT:

### Commitments Developed through Permit Modification

#### **Division 12 Construction/Hydraulics Unit**

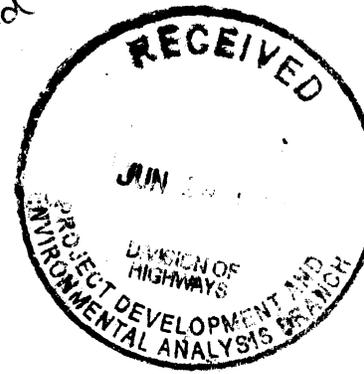
All authorized culverts will be installed to allow the passage of low stream flows and the continued movement of fish and other aquatic life as to prevent headcutting of the streambed. For all box culverts and for pipes greater than 48 inches in diameter, the bottom of the pipe will be buried at least one foot below the bed of the stream. For culverts 48 inches in diameter or smaller, the bottom of the pipe must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter of the culvert. The double cell box culvert at Permit Site 9 will be designed and installed such that low flows are diverted through a single cell. Low flows through the double box culvert at Permit Site 8 will remain through both cells.



REPLY TO  
ATTENTION OF:

*Boawegard*

DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890

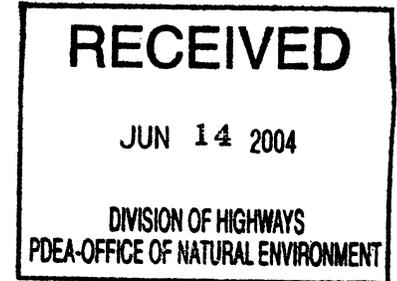


June 8, 2004

Regulatory Division

Action ID No. 200331233, TIP U-2404A

Dr. Gregory J. Thorpe, Ph.D., Director  
Project Development and Environmental Analysis Branch  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, North Carolina 27699-1548



Dear Dr. Thorpe:

Reference the Department of the Army permit issued on December 4, 2003 to the North Carolina Department of Transportation to discharge dredged or fill material into .22 acres of wetland and 2128 linear feet of stream channel in the waters and adjacent wetlands of McLinn Creek and unnamed tributaries, unnamed tributaries of Town Creek and an unnamed tributary of Smyre Creek to construct 3.9 miles of the Newton-Conover Eastern Loop from NC Highway 16 on the south to SR 1739 (Emanuel Church Road) on the north, east of Newton, Catawba County, North Carolina (TIP No. U-2404 A). Also reference your written request of February 25, 2004, to modify Special Condition No. 11 regarding low flow diversions through multiple cell box culverts.

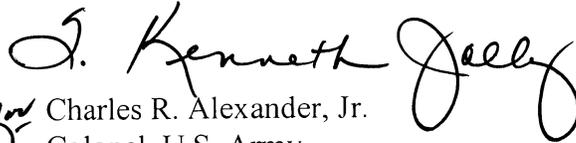
Special Condition No. 11 of the permit is hereby modified to read as follows:

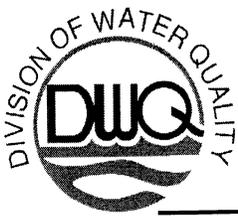
“ All authorized culverts will be installed to allow the passage of low stream flows and the continued movement of fish and other aquatic life as well as to prevent headcutting of the streambed. For all box culverts and for pipes greater than 48 inches in diameter, the bottom of the pipe will be buried at least one foot below the bed of the stream. For culverts 48 inches in diameter or smaller, the bottom of the pipe must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter of the culvert. The double cell box culvert at Permit Site 9 will be designed and installed such that low flows are diverted through a single cell. Low flows through the double box culvert at Permit Site 8 will remain through both cells”

This modification will not result in any additional impacts to jurisdictional waters or wetlands. It is understood that all other conditions of the original permit remain applicable and that the expiration date is unchanged.

If you have any questions, please contact Mr. Steven Lund, Asheville Regulatory Field Office at telephone (828) 271-7980, extension 223.

Sincerely,

  
for Charles R. Alexander, Jr.  
Colonel, U.S. Army  
District Engineer



*Beawogana*

Michael F. Easley, Governor  
William G. Ross Jr., Secretary  
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E., Director  
Division of Water Quality  
Coleen H. Sullins, Deputy Director  
Division of Water Quality

March 10, 2004

Mr. Gregory J. Thorpe, Ph.D., Environmental Director  
NCDOT Planning and Environmental Branch  
1548 Mail Service Center  
Raleigh, NC, 27699-1548

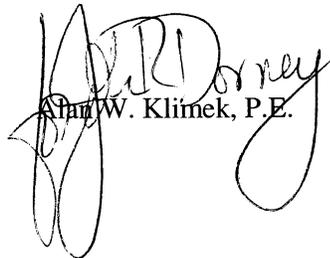
Dear Dr. Thorpe:

Re: MODIFICATION to Water Quality Certification Pursuant to §401 of the Federal Clean Water Act,  
Newton-Conover Eastern Loop, Catawba County.  
State Project No. 8.1792401; Federal Aid Project STP-16(2)  
TIP No. U-2404A  
DWQ Project No. 031048

Attached hereto is a copy of the Modification to Certification No. 3438 issued to The North Carolina Department of Transportation originally issued on October 8, 2003.

If we can be of further assistance, do not hesitate to contact us.

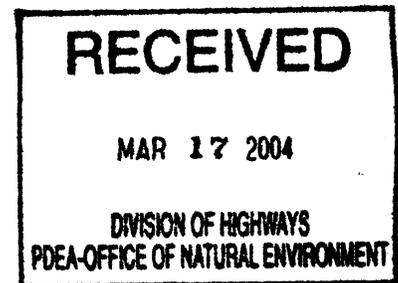
Sincerely,

  
Alan W. Klimek, P.E.



Attachments

cc: Wilmington District Corps of Engineers  
Steve Lund, USACE Asheville Field Office  
NCDWQ Mooresville Regional Office  
Christopher Militscher, US Environmental Protection Agency – Region IV  
William Gilmore, NC Ecological Enhancement Program  
Central Files  
File Copy



## NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

**THIS CERTIFICATION** 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 (DWQ) Regulations in 15 NCAC 2H, .0500. This Certification authorizes the NCDOT to incur the following permanent impacts:

- 0.22 acres of wetlands through fill, excavation and mechanized clearing;
- 2,128 linear feet of jurisdictional stream loss;

The U-2404A project shall be constructed pursuant to the application dated August 18, 2002 and the Modification request dated February 25, 2004 to construct the Newton-Conover Eastern Loop in Catawba County.

The August 18, 2003 Application, the July 2003 *Indirect and Cumulative Impact Study*, and the February 25, 2004 Modification request provides adequate assurance that the discharge of fill material into the waters of the state with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your Application. All work authorized by this Certification must be done in strict compliance with the plans attached to the Application. If this project changes, incurring additional impacts to streams, wetlands or buffers, you are required to notify the DWQ *in writing*, and you may be required to submit a new application. Additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion Control, Non-discharge and Water Supply watershed regulations.

This Certification shall expire three (3) years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding US Army Corps of Engineers Permit, whichever is later.

### Condition(s) of Certification:

1. Construction shall be performed so that no violations of state water quality standards, statutes, or rules occur.
  - a. 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 in order to protect surface water quality standards.
  - b. The erosion and sediment control measures for this project must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the *North Carolina Sediment and Erosion Control Planning and Design Manual*. These 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 projects included under this Certification.
  - c. For borrow pit sites, the erosion and sediment control measures must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the *North Carolina Surface Mining Manual*.
  - d. The reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act.
2. Stormwater shall not be routed to flow directly into streams. Stormwater shall be transported by vegetated conveyance or other means that are appropriate to the site conditions before being

discharged into the streams. Existing wooded stream buffers shall not be mowed in order to allow them to provide diffuse stormwater flow and/or streambank stabilization.

3. Sediment and erosion control measures shall not be placed in wetlands or waters to the maximum extent practicable. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, the devices shall be removed and the natural grade restored within 30 days after the Division of Land Resources has released the project.
4. NCDOT and its contractors and/or agents shall not excavate, fill, or perform mechanized land clearing at any time in the construction or maintenance of this project within waters and/or wetlands, except as authorized by this Certification, or any modification to this Certification. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this Certification without appropriate modification. If this occurs, compensatory mitigation will be required since it is a direct impact from road construction activities.
5. Excavation of stream crossings should be conducted in the dry unless demonstrated by the applicant or its authorized agent to be unfeasible. Sandbags, cofferdams, flexible pipe, or other diversion structures should be used to minimize excavation in flowing water.
6. Live or fresh concrete shall not come into contact with waters of the state until the concrete has hardened.
7. Discharging hydroseeding mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is strictly prohibited.
8. The natural dimension, pattern and profile of the stream above and below the crossing should not be modified by widening the stream channel or changing the depth of the stream.
9. The removal of vegetation in riparian areas should be minimized. NCDOT is encouraged to use existing on-site vegetation and materials for stream bank stabilization and to minimize the use of rip rap. Riprap shall not be placed in the stream bottom.
10. Riparian vegetation, using native trees and shrubs, must be re-established within the construction limits of the project by the end of the growing season following completion of construction to reestablish the riparian zone and to provide long-term erosion control.
11. Placement of culverts and other structures in waters, streams, and wetlands shall be placed below the elevation of the streambed to allow low flow passage of water and aquatic life unless it can be shown to DWQ that providing passage would be impractical. DWQ understands that at Site 8, the double box culvert (2@8X11) matches the stream width. No sill will be used to divert flow through one barrel. At Site 9, flow will be diverted through one cell. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or streambeds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested in writing by DWQ.
12. Heavy equipment should be operated from the bank rather than in the stream channel unless demonstrated by the applicant or its authorized agent to be unfeasible. All mechanized equipment operated near surface waters should be inspected and maintained regularly to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids or other toxic substances.

13. *Mitigation:* Compensatory mitigation shall be the same as that approved by the US Army Corps of Engineers as long as the mitigation required equals a ratio of 1:1 restoration or creation of lost wetland acres as described in 15A NCAC 2H.0506 (h)(6).

Site	Wetland Impact (ac.)	Stream Name	HU	Impacts (ft.)	Stream Mit. Ratio	Mitigation Needed
1		UT Smyre Creek	03050102	308	2:1	118
2	0.15	UT Town Creek	03050102	197	2:1	144
3		UT Town Creek	03050102	266	1:1	266
4	0.07	UT Town Creek	03050102	177	1:1	236
5		UT McLin Creek	03050101	121	0	0
6		UT McLin Creek	03050101	144	2:1	624
7		UT McLin Creek	03050101	194	2:1	518
8		McLin Creek	03050101	180	2:1	360
9		McLin Creek	03050101	272	2:1	544
10		UT McLin Creek	03050101	295	2:1	590
<b>Total</b>	<b>0.22</b>			<b>2128</b>		<b>3400</b>

[Impacts as documented in Table 1 of the August 18, 2003 Application.]

Compensatory mitigation shall be provided by the NC Ecological Enhancement Program (EEP) for all jurisdictional stream and wetland impacts. EEP has confirmed in a letter dated September 30, 2003 that they will assume responsibility for satisfying the federal Clean Water Act compensatory mitigation requirements for the above-referenced project. In accordance with 15A NCAC 2R .0500, this contribution will satisfy NC Division of Water Quality's compensatory mitigation requirements under 15A NCAC 2H.0506(h).

14. Two copies of the final construction drawings shall be furnished to NCDWQ prior to the pre-construction meeting. Written verification shall be provided that the final construction drawings comply with the attached permit drawings contained in the Application dated May 17, 2002.
15. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality upon completion of the project.
16. NCDOT and its authorized agents shall conduct its 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 law and Federal law. If DWQ determines that such standards or laws are not being met (including the 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, DWQ may reevaluate and modify this certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15A NCAC 2H.0507(d). Before modifying the certification, DWQ shall notify NCDOT and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503 and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to NCDOT in writing, shall be provided to the United States Army Corps of Engineers for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.

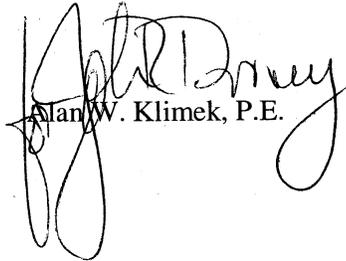
NCDOT shall require its contractors (and/or agents) to comply with all of the terms and conditions of this Certification in the construction and maintenance of this project, and shall provide each of its contractors (and/or agents) a copy of this Certification.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal Permit. This Certification shall expire upon the expiration of the 404 Permit.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This certification and its conditions are final and binding unless you ask for a hearing.

This the 10<sup>th</sup> day of March 2004

DIVISION OF WATER QUALITY



Alan W. Klimek, P.E.

WQC No. 3438



DWQ Project No.: \_\_\_\_\_ County: \_\_\_\_\_  
Applicant: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Date of Issuance of 401 Water Quality Certification: \_\_\_\_\_

**Certificate of Completion**

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1650 Mail Service Center, Raleigh, NC, 27699-1650. This form may be returned to DWQ by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

***Applicant's Certification***

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Agent's Certification***

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***If this project was designed by a Certified Professional***

I, \_\_\_\_\_, as a duly registered Professional \_\_\_\_\_ (i.e., Engineer, Landscape Architect, Surveyor, etc.) in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project, for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature \_\_\_\_\_ Registration No. \_\_\_\_\_ Date \_\_\_\_\_

