



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

January 31, 2013

MEMORANDUM TO: Monte Matthews, USACE

FROM: Gregory J. Thorpe, Ph.D.
Project Development and Environmental Analysis Unit
Don Lee, P.E., Roadside Environmental Unit
David Chang, Ph.D., P.E., Hydraulics Unit

E. Lusk
for

SUBJECT: Comments on Draft Regional General Permit (new number), PCN not required.

The NCDOT appreciates the Corps' work on this new permit, as well as the early comment opportunity. We respectfully submit the following. The commenting party is indicated at the end of each comment, should you need to clarify a comment.

Onsite is Leilani Paugh, *REU* is Ken Pace, *Hydraulics* is Jay Twisdale, *PMG* is Elizabeth Lusk.

Special Conditions a., b., and c. "Activities authorized are:"

Permanent impacts to waters is generally defined as culvert placement or fill. In the case of fill in a tributary as a permanent impact, typically the flow is directed into a constructed ditch outside the roadway fill. This is considered stream relocation requiring mitigation from EEP. This should not be confused with stream relocation using natural stream design that offsets the impact. The language needs to be clarified so that permanent fill impacts with stream relocation not to be used to offset the impact is included in this RGP.

Suggested verbage: *Permanent impacts include culvert/pipe placement or fill in channel with flow redirected into another conveyance. This "relocation" does not reduce the amount of compensatory mitigation required. Onsite*

Special Condition e.

In 20 coastal counties, will all pipes/culverts be required to be buried one foot in Public Trust AEC or CAMA AEC and/or all blue line streams regardless of size? REU

Special Condition g.

This condition discusses fill to be minimized and then includes in-culvert baffles to minimize impacts to waters. Although somewhat related, these are different issues. One is avoidance of physical fill and the other is reducing effects of culverts on aquatic movement. The baffles statement may fit better elsewhere such as in either conditions "e" or "h". REU and Hydraulics

Special Condition h.

No "substantial permanent disruption of the movement of those species of aquatic life indigenous to the waterbody" - does this mean any species? Please clarify the statement of including those that "normally" migrate through the area. There may be certain situations where installing a rock

vane below a culvert outlet could be helpful in maintaining aquatic passage. Suggest including that a rock vane at culvert outlet for this purpose in special condition "h" is acceptable. This condition also touches on installing culverts at floodplain elevation in respect to greater than bank full flows. Multi-cPMG culverts should have floodplain benches installed to maintain flow less than bank full through a single cPMG. There is no mention of these in the permit; however, they are being included on every recent multi-cPMG culvert design. It may be beneficial to clarify that floodplain benches can be used under this permit because this sometimes requires widening and excavation in near-bank areas to construct these benches. REU

3rd sentence: Strike "pre-formed scour holes" in favor of "*Natural rock energy dissipators* are acceptable when designed for velocity reduction." Hydraulics

Special Condition i.

Temporary fills are required to be completely removed and revegetated within a 30 day timeline, when reestablishment of vegetation may require a 60 day timeline (especially with the slower to establish native grasses). We recommend that the use of non-invasive annual small grains be allowed in addition to the native grass species, in order to provide quicker vegetation establishment. Sediment and Erosion Control Rules require establishment of vegetation within 7 to 14 days depending on slope, and NCWRC has coordinated with NCDOT in the past to allow annual small grains to be used in conjunction with the native grasses, thus maintaining vegetative cover while the native grasses become established. REU

Special Condition j.

"In the dry" mostly addresses use of live or fresh concrete with undefined "barriers installed between work areas and aquatic habitat". Work "in the dry" is a typical condition, but, especially in the coastal area because of the tides, a waiver of this requirement is necessary. The Regional Permit should allow for such waivers. Suggest rewording sentence 1 from ". . . to protect that habitat from cement and other pollutants" to . . . to protect that habitat from sediment, concrete and other pollutants. Depending on intent it may be appropriate to reword sentence 2 from ". . . prevent live or fresh concrete, including bags of uncured concrete, from" to prevent live or fresh concrete, including bags of uncured cement, from. Suggest rewording last sentence to the effect that all water that has been in contact with uncured concrete shall be disposed of in an upland area away from the stream or by another approved method (e.g., municipal waste treatment plant) and shall not be discharged to surface waters. REU

Special Condition k.

The paragraph uses the terms shall and will referring to restoring abandoned roadway areas to pre-existing conditions. This is not always practicable or desirable and the language should be revised to allow for discretion of the engineer and site conditions.

Suggested verbage: "...restored to preexisting conditions, *as practicable*, to include...." Onsite

"Abandoned fill shall be removed and area restored to preexisting conditions" within 60 days of completion of construction and restoration plan included in PCN. This is a very tight schedule. Also mitigation credit should be an option. On occasions there may be situations where a length of stream could be restored that could be the equivalent of a significant value in mitigation terms. For example if a 200-foot section of a good quality stream could be restored from removal of fill material there should be a mechanism to get mitigation credit since there will be considerable expense in removing this material and restoring channel. If there will be a similar NW or RGP that will allow this, it may not be a big deal. However, if other permit options disappear and it would require going to an individual permit to obtain mitigation credit, then this would be a concern. REU

Concerning stabilization with native mix, see comment above for special condition "i" REU

Special Condition l.

“Maintain preconstruction, course, condition, capacity and location of open waters”, “unless it benefits the aquatic environment” is vague and needs clarification. Will this apply to old farm ponds? REU

Special Condition m.

“All reasonable and practicable measures to ensure equipment, structures, fill pads and work associated with project do not adversely affect upstream and/or downstream reaches” – define adverse, reasonable and practicable. Define “during construction, routinely monitor”, seems to apply to “actively eroding areas” during construction only. REU

Special Condition n.

Previous renditions contained a distance a tributary flowed to the trout stream. We recommend a distance guide, e.g. 300 feet.

Suggested verbage: “...located less than 300 if upstream of the confluence with a trout stream.”
PMG

The required PCN to the NCWRC in 25 mountain counties will need alternatives summarized and evaluated during the planning process. Streamlining the process to include notification and compensatory mitigation will be difficult. The determination of whether impacts occur in a “trout stream” needs definition.

REU

Suggest moving the special condition on trout waters from page 5 to page 3 insert at current location of special condition “g” after Essential Fish Habitat stuff to keep the biological resources and habitat issues together. Since this draft was written there have been changes in trout county responsibilities at NCWRC. Suggest contacting NCWRC for updates on personnel and county assignments. Clarification is needed on trout streams definition. The condition states trout streams and streams that flow to a trout stream. Are “streams that flow to a trout stream” unnamed tributaries of the trout supporting stream or does it include named streams that flow to a trout supporting stream? REU

Spec Condition o.

Compensatory Mitigation should be assessed if greater than 0.10 acre of wetlands and 150 linear feet of stream impacts. Mitigation required for all permanent impacts but mitigation for stream relocation projects with no threshold is prohibitive. Mitigation plan to be attached to PCN will require coordination with EEP. We will have to obtain approval of stream/wetland assessments to verify mitigation ratios (i.e. – Notification). If the Corps wants higher than 2:1, then Modified Notification GP does not apply. REU

It appears that every stream at each project site will need to be assessed to prevent an application of more than the standard 2:1 mitigation ratio. This could require quite a bit of extra work. The permit does not state what constitutes a mitigation ratio higher than 2:1. Is this a deviation from our current mitigation procedure? This may not be a big deal in Division 14 because projects that I suspect would assess at the “high mitigation ratio level” would already be disqualified for this RGP. However, this may be of concern in other Divisions. REU

Spec Condition p.

Quarterly mitigation report to DE for all projects under this RGP (ATTACHMENT 1 not included) The condition requires additional reporting (notification) to the Corps for fish passage and hydraulics for each culvert location. The condition requires a significant amount of data collection and analysis for each project that is not required for Standard GP 31. Check wording of first sentence “. . . mitigation, and will copy furnish all Corps NCDOT PMs.” REU

General Conditions:

d. Compliance with SPCA S&EC rules – but no mention of NCDOT self-regulating program
REU

f. New language on future “removal, relocation or alteration” at no cost to the US needs
clarification REU

i. Does not grant “Property rights or exclusive privileges” – needs definition. REU

j. Does not authorize any injury to the property or rights of others – please clarify. REU

k. Does not authorize interference with any existing or proposed federal project – please
clarify. REU

n. Unauthorized activities

RGP cannot be used for projects which “may affect” species... is this the ESA’s definition of
“may affect”. If so, this would restrict the use of this RGP significantly. Recommend, “*may
adversely affect*”, per the ESA’s definition. PMG

(6) activities that may *adversely* affect species proposed for listing as threatened or
endangered under the Endangered Species Act. We recommend including only those species
listed or their designated Critical Habitat, exclude species proposed for listing.
Suggested verbage: “Any threatened or endangered species or their designated Critical Habiat...”
PMG

p. “Minimize any adverse impact to fish, wildlife and natural environmental values” – is vague
and needs definition. REU

q. Filter cloth requirement may be problem on slopes over 10%, REU

(1) “*The use of geotextile fabric Filter cloth must be placed underneath...waters should
be determined by the design engineer.*” Hydraulics

v. Clean fill only – will we need to sample? REU

y. Define “unreasonable interference with navigation or the right of the public to riparian access”.
REU

General Comments:

The Modified Notification General Permit also listed two WRC contacts on Page 5. Standard
Notification (GP 31) lists only one. Please verify that Marla Chamber s is responsible for all trout
comments. In several places, the acronym PM or PMs is used. I assume this is Project Manager.
However, unless overlooked, I did not see where it was ever defined. REU

NCDENR DWQ will need to write a Water Quality Certification to address the two Regional
Permits that does not increase paperwork or notification requirements. REU

In order to minimize paperwork and tracking issues, we suggest establishing a minimum
mitigation threshold, (similar to DWQ’s threshold), e.g. no mitigation required for less than 0.1
acre wetlands and 50 feet of stream. REU and PMG

Activities, locations, and situations that are excluded from this permit are extensive and may preclude all but a few NCDOT projects from eligibility. There is a lot of work in this permit from many groups. We would like to be able to apply it to more than a few projects a year. Therefore, we recommend eliminating reference to state restrictions and focus on federal regulatory restrictions.

Exclusions:

ORWs
HQWs
PNAs
IPNA
Contiguous wetlands
AECs
Anadromous
EFH
Trout waters

May affect:
Wild & Scenic
Historic sites
SAVs
T&E species
Proposed for T&E listing
Critical Habitat (ESA)

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
Jay Twisdale, P.E., Hydraulics Unit
Jay Bennett, P.E., Roadway Design Unit