#### THE 101 ON 401S

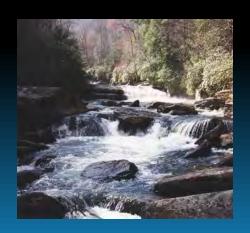
An introduction to 401 Water Quality Certification permitting requirements

Karen Higgins North Carolina Division of Water Quality

#### Section 401 - Clean Water Act

 A 401 Water Quality Certification (WQC) is required for any Federally permitted or licensed activity that may result in a discharge to waters of the U.S.







## Section 401 - Clean Water Act

 When the State issues a 401 WQC, this certifies that a given project will not degrade Waters of the State







#### What is a Stream?

- A stream has a well-defined channel that contains water for at least part of the year
  - May have flow that is increased by stormwater runoff
  - May dry up during part of the year
  - May look like a ditch
  - May have been modified in the past by straightening, relocating, dredging or filling







#### How do you know if there is a stream?

- The U.S. Army Corps of Engineers or Division of Water Quality staff can legally determine if there is a stream present
  - http://portal.ncdenr.org/web/wq/home/ro
  - http://www.saw.usace.army.mil/WETLANDS/where/imap2/imapatt.html

 A qualified environmental consultant may be able to provide guidance

## Wetland Types

- 404 Wetlands
  - Regulated under Section 404
     of the federal Clean Water Act
- Non-404 Wetlands
  - Wetlands not regulated under Section 404 of the federal Clean Water Act
- Coastal (CAMA) Wetlands
  - Regulated under the Coastal Area Management Act





#### How do you know if there is a wetland?

- Only the U.S. Army Corps of Engineers can legally determine if there is a wetland present
- Only the Division of Coastal Management can determine where coastal wetlands are
- The Division of Water Quality can determine where Isolated/Non-404 wetlands are
- A qualified environmental consultant may be able to provide guidance

(one who routinely identifies wetlands with the regulatory agencies)

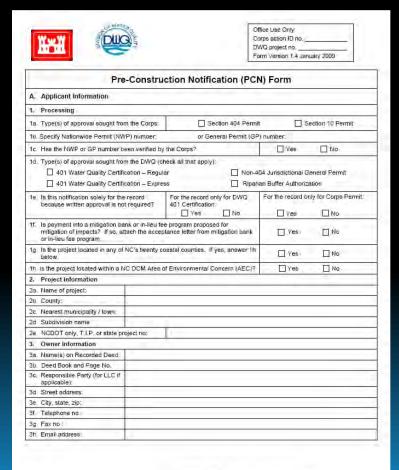
## What types of activities require a 404 permit & 401 WQC?

- A permit is required whether the impact is permanent or temporary
- Common activities that may require permits:
  - Any disturbance to the bottom or sides of a stream
  - Any disturbance to the soil or hydrology of a wetland
  - Damming of a stream channel to create a pond/lake
  - Placement of any material within a stream or wetland

## What Type of WQC?

- If the Corps determines that a project needs a Nationwide, Regional or General Permit,
  - Then you must obtain a corresponding General Certification from DWQ
- If the Corps determines that a project needs an Individual Permit,
  - Then you must obtain an Individual 401 Water
     Quality Certification from DWQ

# How does someone apply for a permit/certification?



- Use the Pre-Construction Notification (PCN) Form :
  - General 401 Water Quality
     Certifications
  - Non-404 Jurisdictional General Permits

## How does someone apply for a permit/certification?

Washington Headquarters, Executive Budget, Paperwork Reduction Projet subject to any penalty for failing to o	spect of the collection of information, in the Services and Communications Direct (0710-0003). Respondents should to comply with a collection of information if the addresses. Completed applications in the addresses.	torate, Information Man- be aware that notwithsta f it does not display a cu	agement Division Inding any other p Irrently valid OME	and to the Office of provision of law, no 3 control number. P	Management and person shall be lease DO NOT
Act, Section 103, 33 USC 1413; Re this form will be used in evaluating t federal, state, and local government of requested information is voluntary of original drawings or good reprodu	Section 10, 33 USC 403; Clean Water gulatory Programs of the Corps of Engi he application for a permit. Routine Us agencies, and the public and may be r, however, if information is not provide ioble copies which show the location ar and be submitted to the District Engir	Act, Section 404, 33 Us neers; Final Rule 33 CF ses: This information ma made available as part of d the permit application and character of the prop	R 320-332. Prin y be shared with of a public notice cannot be evalua- losed activity mus	cipal Purpose: Informathe Department of J as required by Fede ated nor can a permit st be attached to this	mation provided on fustice and other ral law. Submission it be issued. One set application (see
	(ITEMS 1 THRU 4 TO E	BE FILLED BY THE CO	RPS)		
APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVE	D	DATE APPLICATION COMPLETE	
	(ITEMS BELOW TO E	BE FILLED BY APPLIC	ANT)		
5. APPLICANT'S NAME	8. AUTHORIZED A	8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required)			
First - Middle -	Last -	First -	Middle -	Last	-
Company -		Company -			
E-mail Address -	E-mail Address -	E-mail Address -			
6. APPLICANT'S ADDRESS:	9. AGENT'S ADDR	AGENT'S ADDRESS:			
Address-		Address-			
City - State -	Zip - Country -	City -	State -	Zip -	Country -
7. APPLICANT'S PHONE NOs. w/AF	10. AGENTS PHON	10. AGENTS PHONE NOs. w/AREA CODE			
a. Residence b. Busines	a. Residence	dence b. Business c. Fax			
	STATEMENT (	OF AUTHORIZATION			
I hereby authorize, supplemental information in support or		as my agent in the proc	essing of this ap	plication and to furni	sh, upon request,
	SIGNATURE OF APPI	LICANT	DATE		
	NAME, LOCATION, AND DESC	RIPTION OF PROJECT	OR ACTIVITY		
12. PROJECT NAME OR TITLE (see	e instructions)	•			
13. NAME OF WATERBODY, IF KNO		14. PROJECT STREET ADDRESS (if applicable) Address			
15. LOCATION OF PROJECT				_	

Public reporting for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding

OMB APPROVAL NO 0710-0003

U.S. ARMY CORPS OF ENGINEERS

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

Latitude: -N Longitude: -W

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)

Municipality

Range -

EDITION OF OCT 2004 IS OBSOLETE

State Tax Parcel ID

FNG FORM 4345, OCT 2010

- Individual Permits
  - Public comment period
    - May be satisfied by USACE's notice
  - Public hearing
    - May be required

## DWQ can:

- Grant the certification
  - State is saying that the proposed activity will comply with water quality standards
- Deny the certification
  - Applicant did not demonstrate that the project will comply with water quality standards
- Place conditions on the certification
  - Requirements are added to the permit/license
- Waive the certification requirement

## Application Process: 401 WQC

- All applications for certifications shall be granted or denied within 60 days after receipt
- Failure shall result in a waiver of the certification requirement by DWQ, unless
  - The applicant agrees to a longer waiting period
  - Final decision is to be made pursuant to a public hearing
  - Applicant fails to furnish info necessary to DWQ's decision
  - Applicant refuses the staff access to its records or premises
  - Info necessary to DWQ's decision is unavailable

## Application Process: 401 WQC

- The USACE and DWQ require applicants to consider alternatives to impacting waters and wetlands during the design of their project:
  - Avoidance: has the project been designed to avoid impacts to wetlands, streams and other natural resources to the extent practicable?



Minimization: where project impacts are unavoidable, is the project designed such that the impacts have been minimized to the maximum extent practicable?



## Approval of 401 WQC with Additional Conditions

- May ask for an adjudicatory hearing if any of the conditions are unacceptable
  - Must file hearing request within 60 days of receiving the approval letter
- The certification and its conditions are final and binding unless a hearing was requested

## For more information:

- Wetlands, Buffers, Stormwater -Compliance and Permitting Unit
  - 919-807-6300
  - http://portal.ncdenr.org/web/wq/swp/ws/webscape

Mailing Address: 1650 Mail Service Center Raleigh, NC 27699-1650 Physical Address:512 N. Salisbury StreetRaleigh, NC 27604

www.ncwaterquality.org