

# 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?



Office Use Only  
 Corps action ID no. \_\_\_\_\_  
 DWQ project no. \_\_\_\_\_  
 Form Version 1.4 January 2009

## Pre-Construction Notification (PCN) Form

<b>A. Applicant Information</b>		
<b>1. Processing</b>		
1a. Type(s) of approval sought from the Corps:	<input type="checkbox"/> Section 404 Permit	<input type="checkbox"/> Section 10 Permit
1b. Specify Nationwide Permit (NWP) number: _____ or General Permit (GP) number: _____		
1c. Has the NWP or GP number been verified by the Corps? <input type="checkbox"/> Yes <input type="checkbox"/> No		
1d. Type(s) of approval sought from the DWQ (check all that apply):		
<input type="checkbox"/> 401 Water Quality Certification – Regular <input type="checkbox"/> Non-404 Jurisdictional General Permit <input type="checkbox"/> 401 Water Quality Certification – Express <input type="checkbox"/> Riparian Buffer Authorization		
1e. Is this notification solely for the record because written approval is not required?	For the record only for DWQ 401 Certification: <input type="checkbox"/> Yes <input type="checkbox"/> No	For the record only for Corps Permit: <input type="checkbox"/> Yes <input type="checkbox"/> No
1f. Is payment into a mitigation bank or in-lieu fee program proposed for mitigation of impacts? If so, attach the acceptance letter from mitigation bank or in-lieu fee program.		
1g. Is the project located in any of NC's twenty coastal counties, if yes, answer 1h below.		
1h. Is the project located within a NC DCM Area of Environmental Concern (AEC)?		
<b>2. Project Information</b>		
2a. Name of project:		
2b. County:		
2c. Nearest municipality / town:		
2d. Subdivision name:		
2e. NCDOT only, T.I.P., or state project no.:		
<b>3. Owner Information</b>		
3a. Name(s) on Recorded Deed:		
3b. Deed Book and Page No.:		
3c. Responsible Party (for LLC if applicable):		
3d. Street address:		
3e. City, state, zip:		
3f. Telephone no.:		
3g. Fax no.:		
3h. Email address:		

- 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?

- Individual Permits

- Public comment period

- May be satisfied by USACE's notice

- Public hearing

- May be required

<b>U.S. ARMY CORPS OF ENGINEERS</b> <b>APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT</b> <small>(33 CFR 329)</small>		OMB APPROVAL NO. 0710-0003 EXPIRES: 31 AUGUST 2012	
<p>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 this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.</p> <p><b>PRIVACY ACT STATEMENT</b></p> <p>Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers, Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.</p>			
(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)			
1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
(ITEMS BELOW TO BE FILLED BY APPLICANT)			
5. APPLICANT'S NAME		8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required)	
First -	Middle -	Last -	First -
Company -			Middle -
E-mail Address -			Last -
6. APPLICANT'S ADDRESS:		9. AGENT'S ADDRESS:	
Address-		Address-	
City -	State -	Zip -	Country -
7. APPLICANT'S PHONE NOS. w/AREA CODE		10. AGENT'S PHONE NOS. w/AREA CODE	
a. Residence	b. Business	c. Fax	a. Residence
			b. Business
			c. Fax
STATEMENT OF AUTHORIZATION			
11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.			
SIGNATURE OF APPLICANT		DATE	
NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY			
12. PROJECT NAME OR TITLE (see instructions)			
13. NAME OF WATERBODY, IF KNOWN (if applicable)		14. PROJECT STREET ADDRESS (if applicable)	
		Address	
15. LOCATION OF PROJECT			
Latitude: -N	Longitude: -W	City -	State -
			Zip-
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)			
State Tax Parcel ID		Municipality	
Section -	Township -	Range -	

# 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 DWO 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 Street  
Raleigh, NC 27604

[www.ncwaterquality.org](http://www.ncwaterquality.org)