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North Carolina Department of Environment and Natural Resources

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July 3, 2007
Buffer Interpretation/Clarification #2007-011

MEMORANDUM

Background: The North Carolina Department of Transportation (NCDOT) often requires borrow sites for fill material associated with road building projects. NCDOT strives to locate these sites outside of protected buffers. However, project constraints and topographical challenges sometimes necessitate that borrow sites be located within protected buffer boundaries.

Problem: NCDOT Borrow pits are not specifically listed in the table of uses in the Neuse River Buffer Rules 15A NCAC 02B.0233, the Tar-Pamlico River Buffer Rules 15A NCAC 02B.0259, or in the Catawba River Buffer Rules 15A NCAC 02B.0243. If a use is not listed in the table of uses of the buffer rules, it is considered prohibited. However, there are two potential uses under which borrow pits could be categorized, Grading and Revegetation and Mining Activities.

Solution:
Grading and revegetation in Zone 2 is exempt from the buffers rules as long as diffuse flow is provided and the health of the vegetation is not compromised. It is DWQ's determination that excavation of a NCDOT borrow pit in Zone 2 is well beyond grading activities and would damage the root systems and vegetation in Zone 1. Therefore, NCDOT borrow pits can not be covered under Grading and Revegetation in the Table of Uses for the Neuse River Buffer Rules 15A NCAC 02B.0233, the Tar-Pamlico River Buffer Rules 15A NCAC 02B.0259, and the Catawba River Buffer Rules 15A NCAC 02B.0243.

NCDOT borrow pits are covered under mining activities. Mining activities are broken down into two basic categories related to borrow pits, those activities covered by the NC Mining Act and those activities not covered by the NC Mining Act. The NC Division of Land Resources has indicated that NCDOT borrow pits are explicitly exempt from the NC Mining Act. Therefore, NCDOT borrow pits are considered mining activities that are not covered by the NC Mining Act and thus, are allowable with mitigation in the Table of Uses for the Neuse River Buffer Rules 15A NCAC 02B.0233, the Tar-Pamlico River Buffer Rules 15A NCAC 02B.0259, and the Catawba River Buffer Rules 15A NCAC 02B.0243.

Signature: _____

Date: _____

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