

Wetlands Draining Policy

Revised July 9, 1999

BACKGROUND

The N.C. Division of Water Quality (DWQ) in consultation with the N.C. Attorney General's Office has determined that wetland water quality standards set forth at 15A NCAC 2B .0231 (see attachment) may be violated by activities that result in the draining of wetlands such as ditching and groundwater pumping. For several years ditching of wetlands has required 404 Permits and 401 Certifications which were conditioned to ensure that these standards were met. Recent federal court decisions have prevented the Corps of Engineers from requiring 404 permits for draining of wetlands unless spoil is sidecast from the ditch into wetlands. As a result, thousands of acres of wetlands have recently been drained in the coastal plain of North Carolina. This situation has forced DWQ to reexamine whether the unregulated draining of wetlands is violating the state's wetland standards. DWQ has adopted the following policy to insure that activities that drain wetlands will not violate the water quality standards for wetlands.

DWQ intends to examine wetland drainage activities for compliance with the state's wetland water quality standards, particularly those for hydrologic conditions necessary to support wetlands function (15A NCAC 2B .0231(b)(5) and biological integrity (15A NCAC 2B .0231(b)(6)). "Drainage activities" include ditching and installation of groundwater pumping systems that affect wetlands after March 1, 1999. If DWQ discovers any such "drainage activities", DWQ staff will notify landowners in writing that their activity has violated or is likely to violate the state's wetland standards. The landowner will then be given a short time to refute DWQ's findings. If these findings are not successfully refuted, DWQ will initiate an enforcement action and require that the natural hydrology be restored. The U.S. Army Corps of Engineers has informed DWQ that in some instances, the filling of ditches may require the issuance of a 404 Permit. The Corps anticipates that most such activities could be authorized under Nationwide Permit 27. The Corps and DWQ will work to issue any required Permits and Certifications in a timely manner in order to facilitate the expeditious restoration of the natural wetland hydrology. Certification fees will not be required for wetland restoration done as a result of an enforcement action ordered by DWQ although notification to DWQ is required.

DIVISION OF WATER QUALITY: WETLANDS DRAINING POLICY, Revised July 9, 1999

Any new or continued ditching after March 1st, 1999 is a violation of state wetland standards unless as otherwise specified in this policy. Any ditches dug after March 1, 1999 must be filled, using Nationwide Permit 27.

Ditches impacting wetlands that were installed prior to October 1, 1998 are not covered by this policy.

DWQ will not initiate a wetland standard enforcement action for drainage systems installed before March 1, 1999.

If the project is not in compliance with its Sediment and Erosion Control Plan approved prior to March 1, 1999, (i.e., the ditch sides were not appropriately sloped, appropriate BMP's were not installed, ditching went beyond that which was approved or was not installed as approved) and, as appropriate, the National Pollutant Discharge Elimination

System (NPDES) permit for stormwater discharge associated with construction activities, then DWQ and DLR will examine the project to determine which of the following actions may be appropriate: bring the approved ditches into compliance without additional wetland fill, except for sediment and erosion control measures approved by DLR, DWQ and the US Army Corps of Engineers; or fill in the ditch using Nationwide Permit 27. DWQ and DLR will also determine whether to assess civil penalties.

Any ditch installed between October 1, 1998 and March 1, 1999 without an approved Erosion and Sediment Control Plan, where required, is in violation of the Sedimentation and Pollution Control Act, NC General Statute 143.215.1, for failure to obtain a NPDES stormwater permit, and may be in violation of water quality standards. DWQ and DLR will examine the site and where appropriate the landowner will be notified in writing and required to fill the ditch and restore the natural hydrology. The landowner is also subject to possible civil penalties. If the Division of Land Resources determines that any of these projects did not require a Sediment and Erosion Control Plan, then these ditches are acceptable as long as downstream water quality standards are protected.

Agricultural ditches that impact wetlands will be treated as any other ditches under this policy. "Farmed wetlands" as designated by the Natural Resources Conservation Service may be managed as desired by the owner without violating wetland standards since these wetlands have severely altered wetland hydrology and biological integrity. Maintenance of ditches constructed before March 1, 1999 is allowed if the original dimensions of the ditch, when it was initially constructed are not exceeded. Additions, including deepening, to any existing drainage system beyond maintenance will be considered as a new activity if it drains wetlands. DWQ will consult with the Division of Forest Resources in determining whether forestry operations comply with this provision.

Ditches installed for silvicultural purposes after March 1, 1999 must be part of a Forest Management Plan prepared or approved by a Registered Forester and must have water management structures in place that maintain the hydrology of the wetland area. These structures may be managed to temporarily drain the wetland during harvest, planting, and early tree growth for up to three years. If after the three-year period the wetland area is not reforested, the ditches shall be filled and the wetland hydrology restored. Any significant alterations to the biological integrity of the wetland are not allowed. For sites where ditching occurred between October 1, 1998 and March 1, 1999, and the landowner claims that the ditches were installed for silvicultural purposes, the Division of Forest Resources and Division of Land Resources will examine the sites to determine if they are eligible for a silvicultural exemption from the Sediment Pollution Control Act.

Consistent with water quality regulations and DWQ policy, wetland draining activities, which were allowed prior to March 1, 1999, may be examined by DWQ staff for compliance with downstream water quality standards including turbidity, salinity, and dissolved oxygen. If the wetland draining causes violations of water quality standards, DWQ will take appropriate enforcement action.

Temporary ground water pumping is allowed since it will not permanently alter the wetland hydrology as long as the pumping is in compliance with the following Best Management Practices. Following written approval from DWQ of an operation and monitoring plan, a maximum of three days of pumping followed by seven days of non-pumping is allowed. The applicant shall also install monitoring wells along a transect or in several directions of the pumping and supply data to DWQ for review in order to demonstrate the effect of the pumping. If these monitoring wells demonstrate the

adverse impacts of the pumping on adjacent wetland hydrology or biological integrity, the pumping regime shall be altered to reduce the impact. The discharge location for water shall be into adjacent, upslope wetlands as much as possible in order to maintain their hydrology and must be shown on the applicant's plan. As an alternative to this pumping and monitoring regime, DWQ may approve a site specific plan which will protect wetland hydrology.

DWQ CONTACTS FOR ADDITIONAL QUESTIONS AND SITE REVIEWS

DWQ's Regional Offices should be contacted with respect to possible violations of this policy or for site visits.

Asheville 828-296-4500
Fayetteville 910-433-3300
Mooresville 704-663-1699
Raleigh 919-791-4200
Washington 252-946-6481
Wilmington 910-796-7215
Winston-Salem 336-771-5000

The Central Office in Raleigh should be contacted at 919-733-1786 for questions regarding the policy.