

15A NCAC 02B .0230 ACTIVITIES DEEMED TO COMPLY WITH WETLANDS STANDARDS

(a) The following activities for which Section 404 permits are not required pursuant to Section 404(f)(1) of the Clean Water Act and which are not recaptured into the permitting process pursuant to Section 404(f)(2) are deemed to be in compliance with wetland standards in 15A NCAC 02B .0231 provided that they comply with the most current versions of the federal regulations to implement Section 404 (f)(US Environmental Protection Agency and US Army Corps of Engineers including 40 C.F.R. 232.3) and the Sedimentation Pollution Control Act, G.S. 113A, Article 4:

- (1) normal, on-going silviculture, farming, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, provided that relevant silvicultural activities comply with U.S. Environmental Protection Agency and U.S. Army Corps of Engineers Memorandum to the Field entitled "Application of Best Management Practices to Mechanical Silvicultural Site Preparation Activities for the Establishment of Pine Plantations in the Southeast", November 28, 1995 which is available at no cost at <https://www.epa.gov/cwa-404/memorandum-application-best-management-practices-mechanical-silvicultural-site-preparation> and is hereby incorporated by reference including any subsequent amendments and editions;
- (2) maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures, and other maintenance, repairs or modification to existing structures as required by the NC Dam Safety Program. Information about the NC Dam Safety Program can be found at <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/dam-safety>;
- (3) construction and maintenance of farm or stock ponds or irrigation ditches. In addition, new pond construction in designated river basins with riparian buffer protection programs as set forth in this Subchapter shall comply with the applicable requirements of the riparian buffer protection rules as set forth in this Subchapter.
- (4) maintenance of drainage ditches, provided that spoil is removed to high ground, placed on top of previous spoil, or placed parallel to one side or the other of the ditch within a distance of 20 feet and spoils are placed in a manner that minimizes damages to existing wetlands; and ditch maintenance is no greater than the original depth, length and width of the ditch;
- (5) construction of temporary sediment control measures or best management practices as required by the NC Erosion and Sediment Control Program on a construction site, provided that the temporary sediment control measures or best management practices are restored to natural grade and stabilized within two months of completion of the project and native woody vegetation is reestablished during the next appropriate planting season and maintained. Information about the NC Erosion and Sediment Control Program can be found at <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/dam-safety>; and
- (6) construction or maintenance of farm roads, forest roads, and temporary roads for moving mining equipment where such roads are constructed and maintained in accordance with best management practices, as defined in 40 C.F.R. 232.3 (c)(6)(i-xv), to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of navigable waters is not reduced, and that any adverse effects on the aquatic environment will be otherwise minimized.

(b) Where the Director determines, in consultation with the US Army Corps of Engineers or the US Environmental Protection Agency, and considering existing or projected environmental impact, that an activity is not exempt from permitting under Section 404(f), or where the appropriate Best Management Practices are not implemented and maintained in accordance with Paragraph (a) of this Rule, the Director may require restoration of the wetlands as well as imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties) and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215; 143-215.3; 143-215.6A; 143-215.6B; 143-215.6C; Temporary Adoption Eff. November 24, 1999; Eff. April 1, 2001; Readopted Eff. November 1, 2019.

