

15A NCAC 02H .0506 REVIEW OF APPLICATIONS

(a) **NO WRITTEN CONCURRENCE REQUIRED.** Applicants shall request a Certificate of Coverage under a general certification by submitting an application to the Division unless that general certification states that written concurrence from the Division is not required. When written concurrence is not required, the activities shall be deemed certified if all of the conditions of the general certification are followed and may proceed without the review procedures outlined in Paragraph (b) of this Rule.

(b) **EVALUATION.** The Division shall issue an individual certification or a "Certificate of Coverage" under a general certification upon determining that the proposed activity will comply with state water quality standards, which includes designated uses, numeric criteria, narrative criteria and the state's antidegradation policy, as defined in the rules of 15A NCAC 02B .0200 and the rules of 15A NCAC 02L .0100 and .0200. In assessing whether the proposed activity will comply with water quality standards, the Division shall evaluate if the proposed activity:

- (1) has avoided and minimized impacts to surface waters and wetlands to ensure any remaining surface waters or wetlands, and any surface waters or wetlands downstream, continue to support existing uses during and after project completion;
- (2) would cause or contribute to a violation of water quality standards;
- (3) would result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of water quality standards;
- (4) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule;
- (5) for Class SWL wetlands, is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement; and
- (6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or endangered species, is necessary to meet a demonstrated public need.

(c) **MITIGATION.** Replacement or mitigation of unavoidable losses of existing uses shall be reviewed in accordance with all of the following guidelines:

- (1) The Division shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project;
- (2) Total impacts to less than one-tenth of one acre of Class WL and Class SWL wetlands for the entire project shall not require compensatory mitigation;
- (3) All impacts to Class UWL wetlands shall require compensatory mitigation;
- (4) Total impacts to less than 300 linear feet of perennial streams for the entire project shall not require compensatory mitigation. For linear publicly owned and maintained transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger common plan of development, impacts to less than 300 linear feet per perennial stream shall not require compensatory mitigation;
- (5) The ratio of mitigation required to classified surface waters or wetlands impacted is 1:1. The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for establishment, 2 for enhancement and 5 for preservation. These multiplier ratios shall not apply to approved mitigation sites where the Interagency Review Team (insert CFR reference) has approved other ratios;
- (6) Mitigation shall comply with the requirements set forth in G.S. 143-214.11;
- (7) Acceptable methods of mitigation, as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, include restoration, including both re-establishment and rehabilitation, establishment (creation), enhancement, and preservation. No more than 25 percent of the mitigation required by Subparagraph (c)(2), (3) or (4) of this Rule can be met through preservation, unless the Director determines that the public good would be better served by a higher percentage of preservation.
- (8) Mitigation for impacts to classified surface waters and wetlands shall be conducted in North Carolina within the same river basin and in accordance with 33 CFR Part 332, available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm, unless otherwise approved by the Director;
- (9) Mitigation for impacts to Class SWL wetlands shall be of the same wetland type (Class SWL wetlands);

- (10) Mitigation for impacts to wetlands designated in Subparagraph (b)(6) of this Rule shall be of the same wetland type and within the same watershed when practical; and
- (11) Mitigation for impacts to surface waters classified as WS-I, WS-II or WS-III and wetlands adjacent to waters classified as WS-I, WS-II or WS-III shall be within the same water supply watershed when practical.

*History Note: Authority G.S. 143-211(c); 143-214.7C; 143-215.3(a)(1); 143-215.3(c); 143B-282(a)(1)(u); S.L. 2015-286; S.L. 2017-10;
RRC Objection Eff. July 18, 1996 due to lack of statutory authority and ambiguity;
Eff. October 1, 1996;
Readopted Eff. June 15, 2020.*