

SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS

15A NCAC 02H .1301 SCOPE AND PURPOSE

(a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require State review after October 22, 2001 and that require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill, earth, construction debris, soil, etc.).

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of Engineers (USACE) or its designee determines that a particular water is not regulated under Section 404 of the Clean Water Act, and the water meets the definition of isolated waters in Paragraph (f) of this Rule, then discharges to that water shall be covered by this Section. If the USACE or its designee determines that a particular wetland is not regulated under Section 404 of the Clean Water Act, that wetland meets the definition of isolated waters in Paragraph (f) of this Rule, and that wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated>), then discharges to that wetland shall be covered by this Section. The Division shall verify the determination, extent, and location of isolated wetlands and isolated classified surface waters using the U.S. Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) and subsequent regional supplements and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins (v.4.11, 2010).

(c) Activities that result in a discharge may be deemed permitted as described in Rule .1305(a) of this Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a general permit:

- (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These individual permits do not require approval by the U.S. Environmental Protection Agency.
- (2) General permits may be developed by the Division and issued by the Director for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General permits do not require approval by the U.S. Environmental Protection Agency. All activities that receive a Certificate of Coverage under a general permit from the Division shall be covered under that general permit. When written approval is required in the general permit, the application and review procedures for requesting a Certificate of Coverage under a general permit from the Division for the proposed activity are the same as the procedures outlined in this Section for individual permits.

(d) Discharges resulting from activities that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

- (1) Activities described in 15A NCAC 02B .0230;
- (2) Discharges to the following features if they were constructed for erosion control or stormwater management purposes: isolated man-made ponds, isolated man-made wetlands, or isolated man-made ditches;
- (3) Discharges to any man-made isolated pond;
- (4) Discharges to any isolated wetland not regulated under Section 404 of the Clean Water Act that is not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual>);
- (5) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities that receive NPDES Permits or State Non-Discharge Permits;
- (6) Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and
- (7) A discharge resulting from an activity if:

- (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to October 22, 2001;
 - (B) The project requires a State permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required State permits prior to October 22, 2001;
 - (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to October 22, 2001; or
 - (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project that has established a Vested Right under North Carolina law prior to October 22, 2001.
- (f) The terms used in this Section shall be as defined in G.S. 143-212 and G.S. 143-213 and as follows:
- (1) "Class SWL wetland" means the term as defined at 15A NCAC 02B .0231(a).
 - (2) "Class UWL wetland" means the term as defined at 15A NCAC 02B .0231(a).
 - (3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities, regardless of what entities undertake such other actions.
 - (4) "Director" means the Director of the Division.
 - (5) "Division" means the Division of Water Resources of the North Carolina Department of Environmental Quality.
 - (6) "Isolated Wetland" means:
 - (A) a wetland confirmed to be isolated by the USACE prior to June 22, 2020; or
 - (B) a wetland that has been determined to be non-jurisdictional by the USACE after June 22, 2020 and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* memorandum dated December 2, 2008 (available online at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated>).
 - (7) "Isolated Waters" means:
 - (A) a surface water confirmed to be isolated by the USACE prior to June 22, 2020; or
 - (B) a surface water that has been determined to be non-jurisdictional by the USACE after June 22, 2020 and for which an evaluation confirmed by the Division documents that a significant nexus is not present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* memorandum dated December 2, 2008.
 - (8) "Project" means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers.
 - (9) "Secondary impact" means indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.
 - (10) "Wetland" means the term as defined in 15A NCAC 02B .0202.

History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120, s. 54; S.L. 2015-286, s. 4.18;
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
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