

15A NCAC 02H .1305 REVIEW OF APPLICATIONS

(a) **DISCHARGES FROM ACTIVITIES DEEMED TO BE PERMITTED.** The following activities shall be deemed to be permitted:

- (1) Discharges resulting from activities that impact less than 1/2 acre of isolated classified surface waters for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.
- (2) Discharges resulting from activities that impact less than 150 linear feet of isolated classified streams for the entire project are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities.
- (3) Discharges resulting from activities that impact less than or equal to one acre of isolated wetlands for the entire project in the coastal region, less than or equal to one-half acre of isolated wetlands for the entire project in the piedmont region, and less than or equal to one-third acre of isolated wetlands for the entire project in the mountain region are deemed to be permitted provided they fully comply with the conditions listed in Subparagraph (b)(4) of this Rule, and it shall not be necessary for the Division to issue permits for these activities. For purposes of implementing this Subparagraph, the coastal, piedmont and mountain regions shall be as follows:
 - (A) "Coastal Region" includes Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lee, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond, Robeson, Sampson, Scotland, Tyrrell, Washington, Wayne, and Wilson Counties;
 - (B) "Piedmont Region" includes Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cleveland, Davidson, Davie, Durham, Forsyth, Franklin, Gaston, Granville, Guilford, Iredell, Lincoln, Mecklenburg, Montgomery, Orange, Person, Polk, Randolph, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Vance, Wake, Warren, Wilkes, and Yadkin Counties;
 - (C) "Mountain Region" includes Alleghany, Ashe, Avery, Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Swain, Transylvania, Watauga and Yancey Counties.
 - (D) When a landowner believes their property is not in the correct region for purposes of this Rule, they may have a soil scientist conduct a site-specific evaluation to determine the soil series. The soil scientist shall be an individual who is currently licensed or authorized to practice soil science under G.S. 89F by the North Carolina Board for Licensing of Soil Scientists. The landowner shall submit the soil report to the Division of Water Resources for review. Soil series that occur in North Carolina have been categorized by the Natural Resources Conservation Service of the US Department of Agriculture as defined in Rule .1306 of this Section.
- (4) Conditions which must be met for projects deemed to be permitted:
 - (A) Erosion and sediment control practices shall equal at a minimum those required by the N.C. Division of Energy, Mineral, and Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
 - (B) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Energy, Mineral, and Land Resources or local delegated program has released the specific area within the project;
 - (C) Uncured or curing concrete shall not come into direct contact with waters of the state; and
 - (D) All work in or adjacent to isolated stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the NC Sediment and Erosion Control Manual, or the NC DOT

Construction and Maintenance Activities Manual shall be used to minimize excavation in flowing water.

- (E) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.

(b) EVALUATION. The Division shall issue an Individual Permit or a Certificate of Coverage under a General Permit 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 no practical alternative. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs, that the basic project purpose cannot be practically accomplished in an economically viable manner, which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands;
- (2) has avoided and minimized impacts to isolated classified surface waters and isolated 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;
- (3) would not cause or contribute to a violation of water quality standards;
- (4) would not result in secondary or cumulative impacts that cause or contribute to, or will cause or contribute to, a violation of downstream water quality standards; and
- (5) provides for replacement of existing uses through compensatory mitigation as described in Paragraph (c) of this Rule.

(c) MITIGATION. Replacement or mitigation of unavoidable losses of existing uses in isolated classified surface waters or isolated wetlands 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) Mitigation requirements for impacts to isolated wetlands shall only apply to the amount of impact that exceeds the threshold set out in Subparagraph (b)(3) of this Rule. The mitigation ratio for impacts exceeding the threshold for the entire project shall be 1:1. Impacts to isolated wetlands shall not be combined with the project impacts to 404 jurisdictional wetlands or streams for the purpose of determining when impact thresholds that trigger a mitigation requirement are met;
- (3) Total impacts to less than 300 linear feet of isolated 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 stream shall not require compensatory mitigation. The mitigation ratio for isolated stream impacts shall be 1:1;
- (4) 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 multipliers do not apply to approved mitigation sites where the Interagency Review Team has approved other ratios;
- (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act may be used to satisfy the requirements of this Paragraph;
- (6) 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) or (3) 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;
- (7) Mitigation for impacts to isolated classified surface waters, isolated streams and isolated 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; and
- (8) In-kind mitigation is required unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.

History Note: Authority G.S. 143-211(c); 143-214.7C; 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c); S.L. 2014-120; S.L. 2015-286; S.L. 2017-10;
Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;
Temporary Adoption Eff. October 22, 2001;
Eff. April 1, 2003;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));
Readopted Eff. June 15, 2020.