

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2601

DEADLINE FOR RECEIPT: Friday, September 12, 2014

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*Please move the introductory statement on line 8 to the top of the page.*

*What permit are you referring to in line 11? The permit in this Section?*

*The Submission for Permanent Rule Form indicates that you are expanding the General Permit to include all mitigation bank and in-lieu fee projects, not only those related to the NCEEP and the NCWRP; however, you appear to be removing the language regarding the NCEEP and NCWRP programs specifically spelled out in the Form (wetland, stream and buffer mitigation sites and the Wetlands Restoration Program.) Are the activities listed in lines 15-18 related to these programs?*

*Please consider putting in list form the activities contained in lines 15-18.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel  
August 29, 2014

1  
2  
3       **SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION ~~OF WETLAND, STREAM AND~~**  
4       **~~BUFFER MITIGATION SITES BY THE NORTH CAROLINA ECOSYSTEM ENHANCEMENT~~**  
5       **~~PROGRAM OR THE NORTH CAROLINA WETLANDS RESTORATION PROGRAM OF~~**  
6       **MITIGATION BANKS AND IN-LIEU FEE MITIGATION PROJECTS**  
7

8       **15A NCAC 07H .2601 IS AMENDED AS PUBLISHED IN 28:20 NCR 2422-2423 AS FOLLOWS:**  
9

10       **15A NCAC 07H .2601    PURPOSE**

11       This general permit shall allow for the construction ~~of wetland, stream and buffer mitigation sites by the North~~  
12       ~~Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program. This permit shall~~  
13       ~~be applicable only where the restoration, creation or enhancement of a wetland, stream or buffer system is proposed.~~  
14       of mitigation banks and in-lieu fee mitigation projects. This permit shall be applicable only for activities resulting in  
15       net increases in aquatic resource functions and services. These activities include; restoration, enhancement, and  
16       establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal  
17       streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and  
18       tidal open waters. ~~However, this~~ This permit shall not apply within the Ocean Hazard System of Areas of  
19       Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline  
20       within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the  
21       presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible  
22       Area.

23  
24       *History Note:     Authority G.S. 113A-107; 113A-118.1;*  
25       *Eff. October 1, 2014; October 1, 2004.*  
26

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2602

DEADLINE FOR RECEIPT: Friday, September 12, 2014

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*What is the process to request approval in (a)? Is there a specific form to be used or do you just require the information contained in lines 5-6 to be submitted to your office? Does it need to be in writing?*

*In the statement referenced in (b) required to be submitted for the approval set forth in (a)?*

*The commas before and after the and in line 12 appear to be unnecessary.*

*In (c), are the comments referenced the ones submitted pursuant to Paragraph (b) of this Rule?*

*In (d), who is the appropriate representative? Is this the DCM staff referenced in (c)? Is the DCM staff referenced in (c), the permitting officials referenced in (b)? If so, please be consistent.*

*In (d), does the representative have the ability to not issue the authorization to proceed with the proposed development? As written, it appears as though written authorization is always issued, notwithstanding the other provisions of this Rule. It appears as though some guidelines would be helpful – what is the decision based on? The information provided in (a) and (b) and their determination in (c)?*

*In (d), what happens if construction is not started within 365 days of the permit? I see that if it is not started within 365 days of the general authorization then it will be necessary to determine if the general authorization will need to be reissued but there is not similar language for the permit.*

*In (d), how is it determined whether the general authorization will need to be reissued?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
August 29, 2014

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule

Amber Cronk May  
Commission Counsel  
August 29, 2014

1 **15A NCAC 07H .2602 IS AMENDED AS PUBLISHED IN 28:20 NCR 2423 AS FOLLOWS:**

2  
3 **15A NCAC 07H .2602 APPROVAL PROCEDURES**

4 (a) The applicant shall contact the Division of Coastal Management (DCM) and request approval for development.  
5 The applicant shall provide information on site location, a mitigation plan outlining the proposed mitigation  
6 activities, and the applicant's name and address.

7 (b) The applicant shall provide either confirmation that a written statement has been obtained signed by the adjacent  
8 riparian property owners indicating that they have no objections to the proposed work, or confirmation that the  
9 adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall  
10 instruct adjacent property owners to provide any comments on the proposed development in writing for  
11 consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice,  
12 and, indicate that no response shall be interpreted as no objection.

13 (c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the  
14 proposed project, if the proposed project meets the requirements of the rules in this Section.

15 (d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management  
16 representative. Written authorization to proceed with the proposed development shall be issued. Construction of the  
17 mitigation site shall be started within ~~480~~ 365 days of the issuance date of the permit or the general authorization  
18 expires and it shall be necessary to re-examine the proposed development to determine if the general authorization  
19 shall be reissued.

20  
21 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
22 *Eff. October 1, 2014; October 1, 2004.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2604

DEADLINE FOR RECEIPT: Friday, September 12, 2014

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), to what permit are you referring? The permit in this Section?*

*The Submission for Permanent Rule Form indicates that you are expanding the General Permit to include all mitigation bank and in-lieu fee projects, not only those related to the NCEEP and the NCWRP; however, you appear to be removing the language regarding the NCEEP and NCWRP programs specifically spelled out in the Form (wetland, stream and buffer mitigation sites and the Wetlands Restoration Program.)*

*In (b), delete or define "authorized"*

*In (b), what do you mean by "prescribed herein"? Are you referring to the Rules of this Section?*

*In (c), delete or define "full and free"*

*In (c), what work is considered authorized? Is this the work that is being approved pursuant to 15A NCAC 07H .2602?*

*In (d), it appears as though DCM staff is responsible for review of the application pursuant to 15A NCAC 07H .2602. Is DENR making this decision or DCM staff? If the answer is DENR, please delete "the" before "DENR." Elsewhere in this Rule you have not included "the." Also, if it is DENR, how does this work?*

*In (d), it appears as though the semi-colons in the list should be commas.*

*In (e), when will DCM staff coordinate with DENR personnel?*

*In (e), please choose either "and" or "or", whichever is applicable.*

*In (g), where can the local requirements, Guidelines, and land use plans be found?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
August 29, 2014

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel  
August 29, 2014

1 **15A NCAC 07H .2604 IS AMENDED AS PUBLISHED IN 28:20 NCR 2423 AS FOLLOWS:**

2  
3 **15A NCAC 07H .2604 GENERAL CONDITIONS**

4 (a) This permit authorizes only ~~the following~~ those activities associated with the construction of ~~wetland, stream or~~  
5 ~~buffer restoration; creation or enhancement projects conforming to the standards herein; the removal of accumulated~~  
6 ~~sediments; the installation, removal and maintenance of small water control structures, dikes, and berms; the~~  
7 ~~installation of current deflectors; the placement of in-stream habitat structures; modifications of the stream bed or~~  
8 ~~banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of~~  
9 ~~existing drainage structures; the construction of small nesting islands; the construction of open water areas; the~~  
10 ~~construction of oyster habitat over unvegetated bottom in tidal waters; the planting of submerged aquatic vegetation;~~  
11 ~~activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of~~  
12 ~~appropriate wetland species; mechanized land clearing to remove non native invasive exotic or nuisance vegetation;~~  
13 ~~and other related activities.~~ mitigation banks and in-lieu fee mitigation projects.

14 (b) Individuals shall allow authorized representatives of DENR to make periodic inspections at any time deemed  
15 necessary in order to be sure that the activity being performed under authority of this general permit is in accordance  
16 with the terms and conditions prescribed herein.

17 (c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by  
18 the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized  
19 work.

20 (d) This permit shall not be applicable to proposed construction where the DENR has determined, based on an  
21 initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are  
22 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air  
23 quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

24 (e) At the discretion of DCM staff, review of individual project requests shall be coordinated with ~~Division of~~  
25 ~~Marine Fisheries or Wildlife Resources Commission~~ DENR personnel. This coordination may result in a  
26 construction moratorium during periods of significant biological productivity ~~or~~ and/or critical life ~~stages.~~ stages of  
27 fisheries resources.

28 (f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

29 (g) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and  
30 local land use plans current at the time of authorization.

31  
32 *History Note: Authority G.S. 113A-107; 113A-118.1;*

33 *Eff. October 1, 2014; October 1, 2004.*

34



## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2605

DEADLINE FOR RECEIPT: Friday, September 12, 2014

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), what permit are you referring to in line 4? The permit in this Section?*

*The Submission for Permanent Rule Form indicates that you are expanding the General Permit to include all mitigation bank and in-lieu fee projects, not only those related to the NCEEP and the NCWRP; however, you appear to be removing the language regarding the NCEEP and NCWRP programs specifically spelled out in the Form (wetland, stream and buffer mitigation sites and the Wetlands Restoration Program.)*

*The first sentence of (c) appears to be aspirational. Is it necessary?*

*In (e), what is meant by "in accordance with the regulatory policies and procedures in place at the time such a future project is authorized"? As written, this is unclear.*

*In (f), is the authorized work that work that is authorized pursuant to 15A NCAC 07H .2602? Also, how is it determined whether the work will result in a net increase?*

*In (g), what do you mean by "shall be protected in perpetuity"? How is this accomplished? Is this done by a conservation easement, deed restriction or other instrument? If so, please make this more clear.*

*In (g), who is the "approved designee"? Is there a process to obtain approval for a designee?*

*In (g), please delete or define "appropriate" before conservation easement and instrument.*

*In (h), who prepares the monitoring reports? How often are these required to be done?*

*In (i), how is it determined whether the likelihood of flooding will increase?*

*In (j), what is considered appropriate? The silt fence, diversion swales or berns, and sand fences?*

Amber Cronk May  
Commission Counsel  
August 29, 2014

*In (j), what is the process for obtaining approval? Is this set forth in rule or statute?*

*In (l), delete or define "clean."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel  
August 29, 2014

1 15A NCAC 07H .2605 IS AMENDED AS PUBLISHED IN 28:20 NCR 2423-2424 AS FOLLOWS:

2  
3 15A NCAC 07H .2605 SPECIFIC CONDITIONS

4 (a) This general permit shall be applicable only ~~for mitigation site proposals made by the North Carolina Ecosystem~~  
5 ~~Enhancement Program or North Carolina Wetlands Restoration Program.~~ for the construction of mitigation banks or  
6 in-lieu fee mitigation projects.

7 (b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

8 (c) The need to cross wetlands in transporting equipment shall be avoided or minimized to the maximum extent  
9 practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary,  
10 track and low pressure equipment or temporary construction mats shall be utilized for the area(s) to be crossed. The  
11 temporary mats shall be removed immediately upon completion of construction.

12 (d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control  
13 structures, or those structures needed for site monitoring or shoreline ~~stabilization of the mitigation site.~~  
14 stabilization.

15 (e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for  
16 any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be  
17 determined in accordance with the regulatory policies and procedures in place at the time such a future project is  
18 authorized.

19 (f) The authorized work shall result in a net increase in coastal resource functions and values.

20 (g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state and  
21 shall be owned by the permittee or its approved designee. An appropriate conservation easement, deed restriction or  
22 other appropriate instrument shall be attached to the title for the subject property.

23 (h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared for the  
24 authorized mitigation bank or in-lieu fee project site.

25 (i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the  
26 likelihood of flooding any adjacent property.

27 (j) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure  
28 that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or  
29 berms, sand fence, etc.).

30 (k) If one or more contiguous acre of property is to be graded, excavated or filled, the applicant shall file an erosion  
31 and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section, ~~or~~  
32 ~~government having jurisdiction~~. The plan shall be approved prior to commencing the land-disturbing activity.

33 (l) All fill material shall be clean and free of any pollutants, except in trace quantities.

34  
35 *History Note: Authority G.S. 113A-107; 113A-118.1;*

36 *Eff. October 1, 2004;*

37 *Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f)).*