

1 15A NCAC 02H .1301 is amended as published in 36:07 NCR 443-450 as follows:

2  
3 **15A NCAC 02H .1301 SCOPE AND PURPOSE**

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

9 (b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands  
10 and isolated classified surface waters that have been listed in 15A NCAC 02B .0300. If the U.S. Army Corps of  
11 Engineers (USACE) or its designee determines that a particular stream or open water is not regulated under Section  
12 404 of the Clean Water Act, and the stream or open water meets the definition of an isolated water in Paragraph (f) of  
13 this Rule, then discharges to that stream or open water ~~or wetland~~ shall be covered by this Section. If the ~~U.S. Army~~  
14 ~~Corps of Engineers~~ USACE or its designee determines that a particular wetland is not regulated under Section 404 of  
15 the Clean Water ~~Act~~ Act, that wetland meets the definition of an isolated wetland in Paragraph (f) of this Rule, and  
16 that isolated wetland is a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual  
17 prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010 (available online at:  
18 [Where the USACE  
21 has not confirmed the extent and/or location of the wetlands or surface waters, the ~~The~~ Division shall ~~verify~~ confirm  
22 the ~~determination, extent, extent~~ and location of isolated wetlands and isolated classified streams using the U.S. Army  
23 Corps of Engineers Wetland Delineation Manual \(Technical Report Y-87-1\) and subsequent regional supplements  
24 and the Division publication, Methodology for Identification of Intermittent and Perennial Streams and Their Origins  
25 \(v.4.11, 2010\).](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-<br/>19 <del>isolated</del>https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-<br/>20 <del>development/newam-manual</del>)

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

28 (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this  
29 Section. These ~~Individual~~ individual permits do not require approval by the U.S. Environmental  
30 Protection Agency.

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

1 for individual permits. The Director may require an Individual Permit for any project if it is deemed  
2 in the public's best interest or determined that the project is likely to have a significant adverse effect  
3 upon water quality, including state or federally listed endangered or threatened aquatic species, or  
4 will degrade the waters so that existing uses of the waters or downstream waters are precluded.

5 (d) Discharges resulting from activities that are deemed permitted as described in Rule .1305(a) of this Section, or  
6 that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section shall not  
7 be considered to remove existing uses of the isolated wetland or isolated surface waters.

8 (e) The following are exempt from this Section:

9 (1) Activities described in 15A NCAC 02B .0230;

10 (2) Discharges to the following features if they were constructed for erosion control or stormwater  
11 management purposes:

12 (A) ~~isolated man-made ponds ponds,~~ isolated man-made wetlands;

13 (B) ~~or isolated man-made ditches; ditches constructed for [erosion control or] stormwater~~  
14 ~~management purposes;~~

15 (3) Discharges to any man-made isolated pond;

16 (4) Discharges to any isolated wetland not regulated under Section 404 of the Clean Water Act that is  
17 not a Basin Wetland or Bog as described in the North Carolina Wetland Assessment User Manual  
18 prepared by the North Carolina Wetland Functional Assessment Team, version 4.1 October 2010  
19 (available online at: [https://deq.nc.gov/about/divisions/water-resources/water-resources-](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual)  
20 [data/water-quality-program-development/ncwam-manual](https://deq.nc.gov/about/divisions/water-resources/water-resources-data/water-quality-program-development/ncwam-manual));

21 (5) Discharges to isolated ephemeral streams as defined by 15A NCAC 02B .0610;

22 ~~(5)(6)~~ Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting  
23 from activities that receive NPDES Permits or State Non-Discharge Permits;

24 ~~(6)(7)~~ Discharges for water dependent structures as defined in 15A NCAC 02B .0202; and

25 ~~(7)(8)~~ A discharge resulting from an activity if:

26 (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and  
27 these were issued prior to October 22, 2001;

28 (B) The project requires a State permit, such as landfills, NPDES discharges of treated effluent,  
29 Non-Discharge Permits, land application of residuals and road construction activities, that  
30 has begun construction or are under contract to begin construction and have received all  
31 required State permits prior to October 22, 2001;

32 (C) The project is being conducted by the N.C. Department of Transportation and they have  
33 completed 30% of the hydraulic design for the project prior to October 22, 2001; or

34 (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters  
35 for a project that has established a Vested Right under North Carolina law prior to October  
36 22, 2001.

37 (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 (1) "Class SWL wetland" means the term as defined at 15A NCAC 02B ~~.0101~~.0231(a).
- 2 (2) "Class UWL wetland" means the term as defined at 15A NCAC 02B ~~.0101~~.0231(a).
- 3 (3) "Cumulative impact" means environmental impacts resulting from incremental effects of an activity  
4 when added to other past, present, and reasonably foreseeable future activities, regardless of what  
5 entities undertake such other actions.
- 6 (4) "Director" means the Director of the Division.
- 7 (5) "Division" means the Division of Water Resources of the North Carolina Department of  
8 Environmental Quality.
- 9 (6) "Isolated Wetland" means:
- 10 (A) a wetland confirmed to be isolated by the USACE; or
- 11 (B) a wetland that has been determined to be non-jurisdictional by the USACE but has not been  
12 confirmed to be isolated as indicated in Part (A) of this Subparagraph, and for which an  
13 evaluation confirmed by the Division documents that a significant nexus is not present  
14 pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision  
15 in Rapanos v. United States & Carabell v. United States memorandum dated December 02,  
16 2008 (available online at: [https://deq.nc.gov/about/divisions/water-resources/water-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated)  
17 quality-permitting/401-buffer-permitting-branch/401-isolated).
- 18 (7) "Isolated Waters" means:
- 19 (A) a surface water confirmed to be isolated by the USACE; or
- 20 (B) a surface water that has been determined to be non-jurisdictional by the USACE but has  
21 not been confirmed to be isolated as indicated in Part (A) of this Subparagraph, and for  
22 which an evaluation confirmed by the Division documents that a significant nexus is not  
23 present pursuant to the Clean Water Act Jurisdiction Following the U.S. Supreme Court's  
24 Decision in Rapanos v. United States & Carabell v. United States memorandum dated  
25 December 02, 2008. [2008 (available online at: [https://deq.nc.gov/about/divisions/water-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated)  
26 resources/water-quality-permitting/401-buffer-permitting-branch/401-isolated).]
- 27 (8) "Project" means the total project proposed or accomplished by one owner/developer or partnership  
28 or other association of owners/developers.
- 29 ~~(6)~~(9) "Secondary impact" means indirect effects, which are caused by the action and are later in time or  
30 farther removed in distance, but are still reasonably foreseeable to the applicant or the Division.
- 31 ~~(7)~~(10) "Wetland" means the term as defined in 15A NCAC 02B .0202.
- 32  
33

34 *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.  
35 54; S.L. 2015-286, s. 4.18;  
36 Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001  
37 and October 12, 2001;

1                    *Temporary Adoption Eff. October 22, 2001;*  
2                    *Eff. April 1, 2003;*  
3                    *Readopted Eff. June 15, 2020;*  
4                    *Temporary Amendment Eff. May 28, 2021;*  
5                    *Amended Eff. April 1, 2022.*

1 15A NCAC 02H .1401 is adopted as published in 36:07 NCR 443-450 with changes as follows:  
2

3 **SECTION .1400 – ~~DISCHARGES~~ IMPACTS TO FEDERALLY NON-JURISDICTIONAL WETLANDS**  
4 **AND FEDERALLY NON-JURISDICTIONAL CLASSIFIED SURFACE WATERS**  
5

6 **15A NCAC 02H .1401 SCOPE AND PURPOSE**

7 (a) The provisions of this Section shall apply to Division of Water Resources (Division) regulatory and resource  
8 management determinations regarding federally non-jurisdictional wetlands and federally non-jurisdictional classified  
9 surface waters. ~~For the purpose of this Section, "discharge" shall be the deposition of dredged or fill material (e.g. fill,~~  
10 ~~earth, construction debris, soil.)~~ Isolated wetlands and isolated waters as defined in Rule .1301 of this Subchapter shall  
11 be regulated pursuant to Section .1300 of this Subchapter. Federally jurisdictional wetlands and federally  
12 jurisdictional classified waters that the U.S. Army Corps of Engineers (USACE) or its designee has determined to be  
13 subject to Section 404 of the Clean Water Act shall be regulated pursuant to Section .0500 of this Subchapter.

14 (b) This Section outlines the application and review procedures for permitting of ~~discharges into~~ impacts to federally  
15 non-jurisdictional wetlands and federally non-jurisdictional classified surface waters that have been listed in 15A  
16 NCAC 02B .0300. If the USACE or its designee determines that a particular water or wetland is not regulated under  
17 Section 404 of the Clean Water Act, and the particular water or wetland is not an isolated wetland or isolated water as  
18 defined in Rule .1301 of this Subchapter, then ~~discharges~~ impacts to that water or wetland shall be covered by this  
19 Section. Where the USACE has not previously confirmed the extent and/or location of the federally non-jurisdictional  
20 wetlands, the Division shall confirm the extent and location of federally non-jurisdictional wetlands using the U.S.  
21 Army Corps of Engineers Wetland Delineation Manual (Technical Report Y-87-1) (available free of charge on the  
22 internet at: <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4532/>) and subsequent regional  
23 supplements (available free of charge on the internet at: [https://www.usace.army.mil/Missions/Civil-](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/)  
24 [Works/Regulatory-Program-and-Permits/reg\\_supp/](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/)). Where the USACE has not previously confirmed the extent  
25 and/or location of the federally non-jurisdictional streams, the Division shall confirm the extent and location of  
26 federally non-jurisdictional streams using the Division publication, Methodology for Identification of Intermittent and  
27 Perennial Streams and Their Origins (v.4.11, 2010). Any disputes by the applicant or landowner over wetland or  
28 stream determinations made by the Division shall be referred to the Director in writing within 60 calendar days of  
29 written notification from the Division. The Director's determination shall be subject to review as provided in Article  
30 3 of G.S. 150B.

31 (c) Activities that result in a ~~discharge~~ an impact may be deemed permitted as described in Rule .1405(a) of this  
32 Section or authorized by the issuance of either an individual permit or a Certificate of Coverage to operate under a  
33 general permit:

- 34 (1) Individual permits shall be issued on a case-by-case basis using the procedures outlined in this  
35 Section. These individual permits do not require approval by the U.S. Environmental Protection  
36 Agency.
- 37 (2) General permits may be developed by the Division and issued by the Director for types or groups  
38 of ~~discharges~~ impacts resulting from activities that are similar in nature and considered to have

1 minimal impact. General permits do not require approval by the U.S. Environmental Protection  
2 Agency. All activities that receive a Certificate of Coverage under a general permit from the  
3 Division shall be covered under that general permit. When written approval is required in the general  
4 permit, the application and review procedures for requesting a Certificate of Coverage under a  
5 general permit from the Division for the proposed activity are the same as the procedures outlined  
6 in this Section for individual permits. The Director may require an ~~Individual Permit~~ individual  
7 permit for any project if it is deemed in the public's best interest or determined that the project is  
8 likely to have a significant adverse effect upon water quality, including state or federally listed  
9 endangered or threatened aquatic species, or will degrade the waters so that existing uses of the  
10 waters or downstream waters are precluded.

11 (d) ~~Discharges~~ Impacts resulting from activities that are deemed permitted as described in Rule .1405(a) of this  
12 Section, or that receive an individual permit or Certificate of Coverage under a general permit pursuant to this Section  
13 shall not be considered to remove existing uses of the wetland or classified surface waters.

14 (e) The following are exempt from this Section:

15 (1) Activities described in 15A NCAC 02B .0230;

16 (2) ~~Discharges~~ Impacts to the following features if they were constructed for erosion control or  
17 stormwater management purposes:

18 (A) federally non-jurisdictional man-made wetlands, or

19 (B) federally non-jurisdictional man-made ditches;

20 (3) ~~Discharges~~ Impacts to federally non-jurisdictional man-made ponds;

21 (4) ~~Discharges~~ Impacts to federally non-jurisdictional ephemeral streams as defined by 15A NCAC 02B  
22 .0610;

23 (5) Discharges of treated effluent into federally non-jurisdictional wetlands or federally non-  
24 jurisdictional classified surface waters resulting from activities that receive NPDES Permits or State  
25 Non-Discharge Permits; and

26 (6) ~~Discharges~~ Impacts for water dependent structures as defined in 15A NCAC 02B .0202.

27 (f) The terms used in this Section shall be as defined in G.S. 143-212, G.S. 143-213, and Rule .1301 of this Subchapter.

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29 *History Note:* Authority G.S. 143-215.1(a)(6); 143-215.1(b)(3); 143-215.3(a)(1); 143-215.3(c);

30 *Temporary Adoption Eff. May 28, 2021;*

31 *Eff. March 1, 2022.*

1 15A NCAC 02H .1402 is adopted as published in 36:07 NCR 443-450 with changes as follows:  
2

3 **15A NCAC 02H .1402 FILING APPLICATIONS**

4 (a) Any person seeking issuance of an individual permit or Certificate of Coverage under a general permit for  
5 ~~discharges resulting from~~ activities that ~~affect~~ propose to impact federally non-jurisdictional wetlands or federally  
6 non-jurisdictional classified surface waters shall file with the Director, at 1617 Mail Service Center, Raleigh, North  
7 Carolina, 27699-1617, or 512 N Salisbury Street, Raleigh, NC 27604, an original and one copy of an application for  
8 a permit or submit one complete application electronically via the following website:  
9 [https://edocs.deq.nc.gov/Forms/DWR\\_Wetlands\\_Online\\_Submittal\\_Page](https://edocs.deq.nc.gov/Forms/DWR_Wetlands_Online_Submittal_Page). The application shall be made on a form  
10 provided or approved by the Division, available electronically via the following website:  
11 [https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application)  
12 [branch/application](https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/application). The application shall include at a minimum the following:

- 13 (1) the date of application;
- 14 (2) the name, address, and phone number of the ~~property~~ applicant. If the applicant is not the property  
15 owner(s), name, address, and phone number of the property owners(s);
- 16 (3) if the applicant is a corporation, the name and address of the North Carolina process agency, and  
17 the name, address, and phone number of the individual who is the authorized agent of the corporation  
18 and responsible for the activity for which ~~certification~~ permit is sought. The corporation must be  
19 registered with the NC Secretary of State's Office to conduct business in NC;
- 20 (4) the nature of the ~~discharge, impact~~, including cumulative impacts to all wetlands and waters  
21 (isolated wetlands, isolated classified surface waters, federally non-jurisdictional wetlands, federally  
22 non-jurisdictional classified surface waters, jurisdictional wetlands, and jurisdictional waters) that  
23 cause or will cause a violation of downstream water quality standards resulting from an activity to  
24 be conducted by the applicant;
- 25 (5) whether the ~~discharge~~ impact has occurred or is proposed;
- 26 (6) the location and extent of the ~~discharge, impact~~, stating the municipality, if applicable, and the  
27 county; the drainage basin; the name of the nearest named surface waters; and the location of the  
28 ~~point of discharge~~ impact with regard to the nearest named surface waters;
- 29 (7) an application fee as required by G.S. 143-215.3D. If payment of a fee is required for a 401 Water  
30 Quality Certification, then that fee shall suffice for this Rule;
- 31 (8) a map(s) with scales and north arrows that is legible to the reviewer and of sufficient detail to  
32 delineate the boundaries of the lands owned or proposed to be utilized by the applicant in carrying  
33 out the ~~discharge~~ impact; the location, dimensions, and type of any structures that affect federally  
34 non-jurisdictional wetlands or federally non-jurisdictional classified surface waters for use in  
35 connection with the ~~discharge~~ impact; and the location and extent of the federally non-jurisdictional  
36 wetlands or federally non-jurisdictional classified surface waters within the boundaries of the lands;  
37 and

1 (9) a signature by the applicant or an agent authorized by the applicant. If an agent is signing for the  
2 applicant, an agent authorization letter shall be provided. In signing the application, the applicant  
3 certifies that all information contained therein or in support thereof is true and correct to the best of  
4 their knowledge.

5 (b) The Division may request in writing, and the applicant shall furnish, any additional information necessary to  
6 clarify or complete the information provided in the application under Paragraph (a) of this Rule, or to complete the  
7 evaluation in Rule .1405 of this Section.

8 (c) If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required  
9 by Paragraphs (a) and (b) of this Rule, then the applicant shall submit an explanation detailing the reasons for omission  
10 of the information. The final decision regarding the completeness of the application shall be made by the Division  
11 based upon the information required in Paragraphs (a) and (b) of this Rule, and any explanation provided by the  
12 applicant regarding omitted information provided in this Paragraph.

13 (d) Pursuant to G.S. 143-215.3(a)(2), the staff of the Division shall conduct such investigation as the Division deems  
14 necessary to clarify the information provided in the application under Paragraph (a) of this Rule or to complete the  
15 evaluation in Rule .1405 of this Section. For the purpose of review of an application, the applicant shall allow the staff  
16 safe access to the lands and facilities of the ~~applicant~~ proposed impacts and lend such assistance as shall be reasonable  
17 for those places, upon the presentation of credentials, and advanced notice of at least three days.

18 (e) Joint applications with 401 certification and/or isolated wetlands permitting submitted to the Division shall suffice  
19 for an application pursuant to this Rule, so long as the application contains all of the information required by this Rule  
20 and provided that the applicant specifically indicates that authorization is sought under this Rule.

21 (f) Submission of an application to the Division of Coastal Management for a permit to develop in North Carolina's  
22 coastal area in accordance with the rules of 15A NCAC 07J .0200 shall suffice as an application for a ~~water quality~~  
23 ~~certification~~ individual permit or certificate of coverage under a general ~~certification~~ permit upon receipt by the  
24 Division from the Division of Coastal Management.

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26  
27 *History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1);*  
28 *Temporary Adoption Eff. May 28, 2021;*  
29 *Eff. March 1, 2022.*

1 15A NCAC 02H .1403 is adopted as published in 36:07 NCR 443-450 with changes as follows:  
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3 **15A NCAC 02H .1403 PUBLIC NOTICE AND PUBLIC HEARING**

4 (a) The Division shall provide public notice for proposed general permits. This notice shall be sent to all individuals  
5 on the mailing list described in Paragraph (g) of this Rule and posted on the Division's website:  
6 <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public->  
7 notices. Notice shall be made at least 30 calendar days prior to issuance of the general permit by the Division. Public  
8 notice shall not be required for those activities covered by Certificates of Coverage under a general permit.

9 (b) Notice of each pending application for an individual permit shall be sent to all individuals on the mailing list  
10 described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30  
11 calendar days prior to proposed final action by the Division on the application.

12 (c) The notice for each pending application for an individual permits shall set forth:

- 13 (1) the name and address of the applicant;
- 14 (2) the action requested in the application;
- 15 (3) the nature and location of the ~~discharge~~; impact; and
- 16 (4) the proposed date of final action to be taken by the Division on the application.

17 The notice shall also state where additional information is available online and on file with the Division. Information  
18 on file shall be made available upon request between 8:00 am and 5:00 pm, Monday through Friday, excluding State  
19 holidays, and copies shall be made available upon payment of the cost thereof to the Division pursuant to G.S. 132-  
20 6.2.

21 (d) The public notice requirement for an individual permit as described in Paragraph (b) of this Rule may be satisfied  
22 by a joint notice with the Division of Coastal Management, pursuant to 15A NCAC 07J .0206, the U.S. Army Corps  
23 of Engineers according to their established procedures, by a joint notice by the Division for an individual certification  
24 in accordance with Rule .0503 of this Subchapter, or by a joint notice by the Division for an individual permit in  
25 accordance with Rule .1303 of this Subchapter.

26 (e) Any person who desires a public hearing on a general permit or an individual permit application shall submit a  
27 written request to the to the Division at the address listed in Rule .1402 of this Section. In order to be considered by  
28 the Director, the request must be received by the Division within 30 calendar days following the public notice.

29 (f) If the Director determines that there is significant public interest in holding a hearing, based upon such factors as  
30 the reasons why a hearing was requested, the nature of the project, and whether the project is likely to have a significant  
31 adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or will  
32 degrade the waters so that existing uses of the waters or downstream waters are precluded, the Division shall notify  
33 the applicant in writing that there will be a hearing. The Division shall also provide notice of the hearing to all  
34 individuals on the mailing list as described in Paragraph (g) of this Rule and shall post the notice on the Division's  
35 website. The notice shall be published at least 30 calendar days prior to the date of the hearing. The notice shall state  
36 the time, place, and format of the hearing. The notice may be combined with the notice required under Paragraph (c)  
37 of this Rule. The hearing shall be held within 90 calendar days following date of notification to the applicant. The

1 record for each hearing held under this Paragraph shall remain open for a period of 30 calendar days after the public  
2 hearing to receive public comments.

3 (g) Any person may request that he or she be emailed copies of all public notices required by this Rule. The Division  
4 shall add the email address of any such person to an email listerv and follow procedures set forth in Rule .0503(g) of  
5 this Subchapter.

6 (h) Any public hearing held pursuant to this Rule may be coordinated with other public hearings held by the  
7 Department or the U.S. Army Corps of Engineers.

8

9 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(a)(3); 143-215.3(c);*  
10 *Temporary Adoption Eff. May 28, 2021;*  
11 *Eff. April 1, 2022.*

1 15A NCAC 02H .1404 is adopted as published in 36:07 NCR 443-450 with changes as follows:  
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3 **15A NCAC 02H .1404 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF**  
4 **COVERAGE**

5 (a) The Director shall issue the permit or Certificate of Coverage, deny the application, provide notice of hearing  
6 pursuant to Rule .1403 of this Section, or request additional information within 60 calendar days after receipt of the  
7 application. When the Director requests additional information, the 60-day review period restarts upon receipt of all  
8 of the additional information requested by the Director. Failure to issue the permit or Certificate of Coverage, deny  
9 the application, provide notice of hearing, or request additional information within 60 calendar days shall be  
10 considered an approval of the application, unless:

- 11 (1) The applicant agrees, in writing, to a longer period;
- 12 (2) The final decision is to be made pursuant to a public hearing;
- 13 (3) The applicant refuses the staff access to its records or premises for the purpose of gathering  
14 information necessary to the Director's decision; or
- 15 (4) Information necessary to the Director's decision is unavailable.

16 (b) The Director shall issue the permit or Certificate of Coverage, deny the application, or request additional  
17 information within 60 calendar days following the close of the record for the public hearing. Failure to take action  
18 within 60 calendar days shall be considered an approval of the application by the Director, unless Subparagraphs  
19 (a)(1), (3), or (4) of this Rule apply.

20 (c) Any permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director  
21 shall deem necessary to ensure compliance with this Section, including written ~~post-discharge~~ notification to the  
22 ~~Division.~~ Division that the impacts have been completed.

23 (d) Modification or Revocation of permit or Certificate of Coverage:

- 24 (1) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation  
25 or modification by the Director for violation of conditions of the permit or Certificate of Coverage;  
26 and
- 27 (2) Any permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation  
28 or modification by the Director upon a determination that information contained in the application  
29 or presented in support thereof is incorrect or if the Director finds that the ~~discharge has~~ activities  
30 have violated or may violate a downstream water quality standard.

31 (e) The Division shall notify the applicant of the final action to issue or deny the application. In the event that the  
32 Director denies the application, the Director shall specify the reasons for the denial.

33 (f) Certificates of Coverage for general permits shall be issued for a period of five years, after which time the approval  
34 shall be void, unless the ~~discharge impact~~ is complete or an extension is granted pursuant to Paragraph (h) of this Rule.  
35 The permit shall become enforceable when a Certificate of Coverage is issued.

36 (g) Individual permit or Certificate of Coverage renewals shall require a new complete application.

1 (h) A Permittee may request in writing that the Division grant an extension before the permit expires. An extension  
2 may be granted by the Division for a time period of one additional year, provided that the construction has commenced  
3 or is under contract to commence before the permit expires.

4 (i) The issuance or denial is a final agency decision that is subject to administrative review pursuant to G.S. 150B-  
5 23.

6

7 *History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c);*

8 *Temporary Adoption Eff. May 28, 2021;*

9 *Eff. April 1, 2022.*

1 15A NCAC 02H .1405 is adopted as published in 36:07 NCR 443-450 with changes as follows:  
2

3 **15A NCAC 02H .1405 REVIEW OF APPLICATIONS**

4 (a) The following activities shall be deemed to be permitted:

5 (1) ~~Discharges resulting from activities~~ Activities that impact less than 1/2 acre of federally non-  
6 jurisdictional classified open waters (e.g., lakes, ponds) for the entire project are deemed to be  
7 permitted provided they comply with the conditions listed in Subparagraph (4) of this Paragraph,  
8 and it shall not be necessary for the Division to issue permits for these activities.

9 (2) ~~Discharges resulting from activities~~ Activities that impact less than a total of 150 linear feet of  
10 federally non-jurisdictional classified intermittent and perennial streams for the entire project are  
11 deemed to be permitted provided they comply with the conditions listed in Subparagraph (4) of this  
12 Paragraph, and it shall not be necessary for the Division to issue permits for these activities.

13 (3) Except for activities that impact wetlands classified as coastal wetlands [15A NCAC 07H .0205],  
14 Unique Wetlands (UWL) [15A NCAC 02B .0231]; or are adjacent to waters designated as: ORW  
15 (including SAV), HQW (including PNA), SA, WS-I, WS-II, Trout or North Carolina National Wild  
16 and Scenic River. ~~Discharges resulting from activities~~ activities that impact less than or equal to  
17 1/10 acre of federally non-jurisdictional wetlands for the entire project are deemed to be permitted  
18 provided they comply with the conditions listed in Subparagraph (4) of this Paragraph, and it shall  
19 not be necessary for the Division to issue permits for these activities.

20 (4) Conditions which shall be met for projects deemed to be permitted:

21 (A) Erosion and sediment control practices are required and shall equal at a minimum those  
22 required by the N.C. Division of Energy, Mineral, and Land Resources (DEMLR) or its  
23 local delegated program for the Sedimentation Pollution Control Act and shall be in  
24 compliance with all DEMLR or appropriate local delegated program specifications  
25 governing the design, installation, operation, and maintenance of such practices in order to  
26 help assure compliance with the appropriate turbidity and other water quality standards;

27 (B) All erosion and sediment control practices placed in federally non-jurisdictional wetlands  
28 or federally non-jurisdictional classified surface waters shall be removed and the original  
29 grade restored within two months after the DEMLR or appropriate local delegated program  
30 has released the specific drainage area within the project;

31 (C) Uncured or curing concrete shall not come into direct contact with waters of the State;

32 (D) All work in or adjacent to federally non-jurisdictional intermittent or perennial streams  
33 shall be conducted so that the flowing stream does not come in contact with the disturbed  
34 area; and

35 (E) Measures shall be taken to ensure that the hydrologic functions of any remaining federally  
36 non-jurisdictional wetlands and federally non-jurisdictional classified surface waters are  
37 not adversely affected by the ~~discharge.~~ impact.

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

- 6 (1) has no practical alternative. A lack of practical alternatives may be shown by demonstrating that,  
7 considering the potential for a reduction in size, configuration, or density of the proposed project  
8 and all alternative designs, that the basic project purpose cannot be practically accomplished in an  
9 economically viable manner, which would avoid or result in less adverse impact to federally non-  
10 jurisdictional wetlands and federally non-jurisdictional classified surface waters;
- 11 (2) has avoided and minimized impacts to federally non-jurisdictional wetlands and federally non-  
12 jurisdictional classified surface waters to ensure any remaining surface waters or wetlands, and any  
13 surface waters or wetlands downstream, continue to support existing uses during and after project  
14 completion;
- 15 (3) would not cause or contribute to a violation of water quality standards;
- 16 (4) would not result in secondary or cumulative impacts that cause or contribute to, or will cause or  
17 contribute to, a violation of downstream water quality standards; and
- 18 (5) provides for replacement of existing uses through compensatory mitigation as described in  
19 Paragraph (c) of this Rule;
- 20 (6) for Class UWL wetlands and wetlands that are habitat for state or federally listed threatened or  
21 endangered species, is necessary to meet a demonstrated public need.

22 (c) Replacement by mitigation of unavoidable losses of existing uses in federally non-jurisdictional wetlands and  
23 federally non-jurisdictional classified surface waters shall be reviewed in accordance with all of the following  
24 guidelines:

- 25 (1) The Division shall coordinate mitigation requirements with other permitting agencies that are  
26 requiring mitigation for a specific project;
- 27 (2) Total impacts to less than 1/10 acre of federally non-jurisdictional wetlands shall not require  
28 compensatory mitigation. The mitigation ratio for federally non-jurisdictional wetlands shall be 1:1.  
29 Impacts to non-jurisdictional wetlands shall not be combined with the project impacts to wetlands  
30 that are regulated under Section 404 of the Clean Water Act or isolated wetlands for the purpose of  
31 determining when impact thresholds that trigger a mitigation requirement are met;
- 32 (3) Total impacts to less than 300 linear feet of federally non-jurisdictional perennial streams for the  
33 entire project shall not require compensatory mitigation. For linear publicly owned and maintained  
34 transportation projects that the U.S. Army Corps of Engineers determines are not part of a larger  
35 common plan of development, impacts to less than 300 linear feet per stream shall not require  
36 compensatory mitigation. The mitigation ratio for federally non-jurisdictional stream impacts shall  
37 be 1:1;

- 1 (4) The required area or length of mitigation required shall be multiplied by 1 for restoration, 1.5 for  
2 establishment, 2 for enhancement and 5 for preservation. These multipliers do not apply to approved  
3 mitigation sites where the Interagency Review Team has approved other ratios;
- 4 (5) Mitigation shall comply with the requirements set forth in G.S. 143-214.11. Mitigation projects  
5 implemented within waters or wetlands that are regulated under Section 404 of the Clean Water Act  
6 or Section .1300 of this Subchapter may be used to satisfy the requirements of this Paragraph;
- 7 (6) Acceptable methods of ~~mitigation~~ mitigation, as defined in 33 CFR Part 332 available free of charge  
8 on the internet at: [http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation\\_index.cfm](http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm),  
9 include restoration, including both re-establishment and rehabilitation, establishment (creation),  
10 enhancement and preservation. No more than 25 percent of the mitigation required by Subparagraph  
11 (2) or (3) of this Paragraph may be met through preservation, unless the Director determines that  
12 the public good would be better served by a higher percentage of preservation;
- 13 (7) Mitigation for impacts to federally non-jurisdictional wetlands and federally non-jurisdictional  
14 classified surface waters shall be conducted in North Carolina within the same river basin and in  
15 accordance with 33 CFR Part 332, available free of charge on the internet at:  
16 [http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation\\_index.cfm](http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm), unless otherwise  
17 approved by the Director; ~~and~~
- 18 (8) Mitigation for impacts to wetlands designated in Subparagraph (b)(6) of this Rule shall be of the  
19 same wetland type and within the same watershed when practical; and
- 20 ~~(8)(9)~~ (9) In-kind mitigation is required unless the Director determines that other forms of mitigation would  
21 provide greater water quality or aquatic life benefit.

22  
23 *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);*  
24 *Temporary Adoption Eff. May 28, 2021;*  
25 *Eff. April 1, 2022.*