DEQ Divisions
Structural Overview
Permitting Divisions

- Division of Air Quality
- Division of Energy, Mineral and Land Resources
- Division of Waste Management
- Division of Water Resources
- Division of Coastal Management

Approximately 200 types of permits, certificates, and licenses
• **General Statutes**: Legally binding laws and requirements
  - Developed and ratified by the General Assembly and signed into law by the Governor

• **Rules**: implement the statutes and provide additional detail/information on the program function and requirements (aka, North Carolina Administrative Code/NCAC)
  - For most water quality, air quality, and waste management rules, developed and adopted by the Environmental Management Commission.
  - For coastal management rules, developed and adopted by the Coastal Resources Commission
1. 15A NCAC 02H .0503 (a) requires General Certifications to be noticed (via listserv and website posting) once. After that process completes, the GCs are not re-noticed for their lifetime (usually 5 years). **They make up the majority of 401s issued.**

2. Public Notice for Individual Certifications are required by 15A NCAC 02H .0503 (b)

   (b) Notice of each pending application for an individual certification shall be sent to all individuals on the mailing list described in Paragraph (g) of this Rule and shall be posted on the Division's website. Notice shall be made at least 30 calendar days prior to proposed final action by the Division on the application.
Project may result in dredge or fill to waters

Does the activity fit ACOENWP?

ACOE Individual Permit
DWR Individual Certification

ACOE Nationwide Permit

DWR General Certification

No Written Concurrence req'd

Written Concurrence req'd

Public Notice Required

Final Agency Decision

Comments reviewed, addressed

Public Hearing

Public Notice Required

If requested by public, at Director discretion

If requested by public, at Director discretion

Appealable to OAH

401 Rule (expected May 2020) will limit review scope

Soon to be final WOTUS Rule Limits

Public Noticed, usually as a set, once when promulgated (~every 5 years). Can go to hearing

Review Governed by Secondary and Cumulative Impact Policy

Most times ACOE will notice the project which satisfies DWR rule. Other times DCM will notice which also satisfies DWR rule. Rarely DWR will go to notice to satisfy rule when ACOE or DCM do not notice.

ACOE Scope Broader - Approves Project

Purpose definition May require EIS

No Written Concurrence req'd

At the Director’s discretion

Written Concurrence req’d

No Written Concurrence req’d

Written Concurrence req’d

At the Director’s discretion

Written Concurrence req’d

No Written Concurrence req’d

Written Concurrence req’d

At the Director’s discretion

401 Permitting Process
• Title V - public participation is codified in 15A NCAC 02Q .0521

A) Requirement of public notice with opportunity for comments and a hearing on all draft permits and permit revisions (with some exceptions).

B) Notice of any draft permit which then goes to public hearing must be put in newspaper, posted on DAQ website, and emails to person on emailing list.

C) Notice for existing facilities for which a public hearing is not scheduled shall be given by posting draft permit on DAQ website and given to interested persons.

• Must allow 30 days for public comments, and Director may determine public hearing is necessary (additional 30 day notice of hearing).
Ultra Vires

• Ultra vires refers to the legal principle that an authority (for example: NCDEQ) can exercise only so much power as is conferred on it by law

• For DEQ, this means that the agency cannot take actions in violation of the “express language” of its regulations

• This includes both laws and rules under the Administrative Code (since these rules must prescribe to the laws)

• This has been upheld in the North Carolina Court of Appeals on several occasions (see 119 N.C. App. 772, 776, 460 S.E 2d 194, 197)
Questions?

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