



### Implementation of N.C. General Assembly Session Law 2008-152

The purpose of this document is to communicate to N.C. Department of Environment and Natural Resources partners and customers how the department will implement SL 2008-152, *An Act to Promote Private Compensatory Mitigation by Private Mitigation Banks*. This document describes what actions will be taken by the Division of Water Quality (DWQ) and the Ecosystem Enhancement Program (EEP), two NCDENR agencies whose policies and procedures are affected by the law. The Act places additional obligations on permit applicants before they can access the EEP In-Lieu Fee (ILF)-Program.

#### Applicability and Regulatory Effect

- The requirements of the law complement existing statutory and rule requirements, and will be applied to mitigation for streams, wetlands and isolated wetlands. The law does not apply to the state's nutrient offset and buffer programs.
- The law totally or partially overrides the following existing DWQ rules: 15A NCAC 2H .0506(h)(1); 15A NCAC 2H .0506(h)(3); 15A NCAC 2H .1305(g)(1); and 15A NCAC 2H .1305(g)(3)
- Applicant- provided mitigation is still approvable by DWQ, when suitable, even when a private bank has credits available in the hydrologic unit.
- The law is applicable to mitigation that is required for compliance associated with violations.
- Mitigation banks developed by public entities are not subject to preferences expressed in the law for private mitigation banks.

#### Definitions

"Available mitigation credit" is considered to mean that credits in the amount requested have been released for sale at the time of the request. If credits are available through a private mitigation bank, applicants are required to use the bank to fulfill their compensatory mitigation requirements (unless they choose to provide the mitigation themselves).

#### Procedures

The flow chart at the end of this document is intended to offer a step-by-step guide to permit applicants needing to comply with this law. In general the following process will be followed:

1. Permit applicants will be responsible for ensuring compliance with the law. EEP and DWQ will assist applicants by notifying them of the new requirements and directing them to applicable information on the web. EEP and DWQ will both provide updated links and information on their Web sites (<http://www.nceep.net/pages/mitigate.htm> and [http://h2o.enr.state.nc.us/ncwetlands/documents/mitigation\\_banks.doc](http://h2o.enr.state.nc.us/ncwetlands/documents/mitigation_banks.doc)).
2. DWQ will provide on its Web site a listing of approved mitigation banks, locations, contact information and credit types available as a reference for permit applicants (see Web links in previous item).

Applicants to EEP's ILF programs for stream and wetland mitigation will need to refer to this Web site for up-to-date information on banks in their hydrologic unit prior to submitting a request to EEP for mitigation.

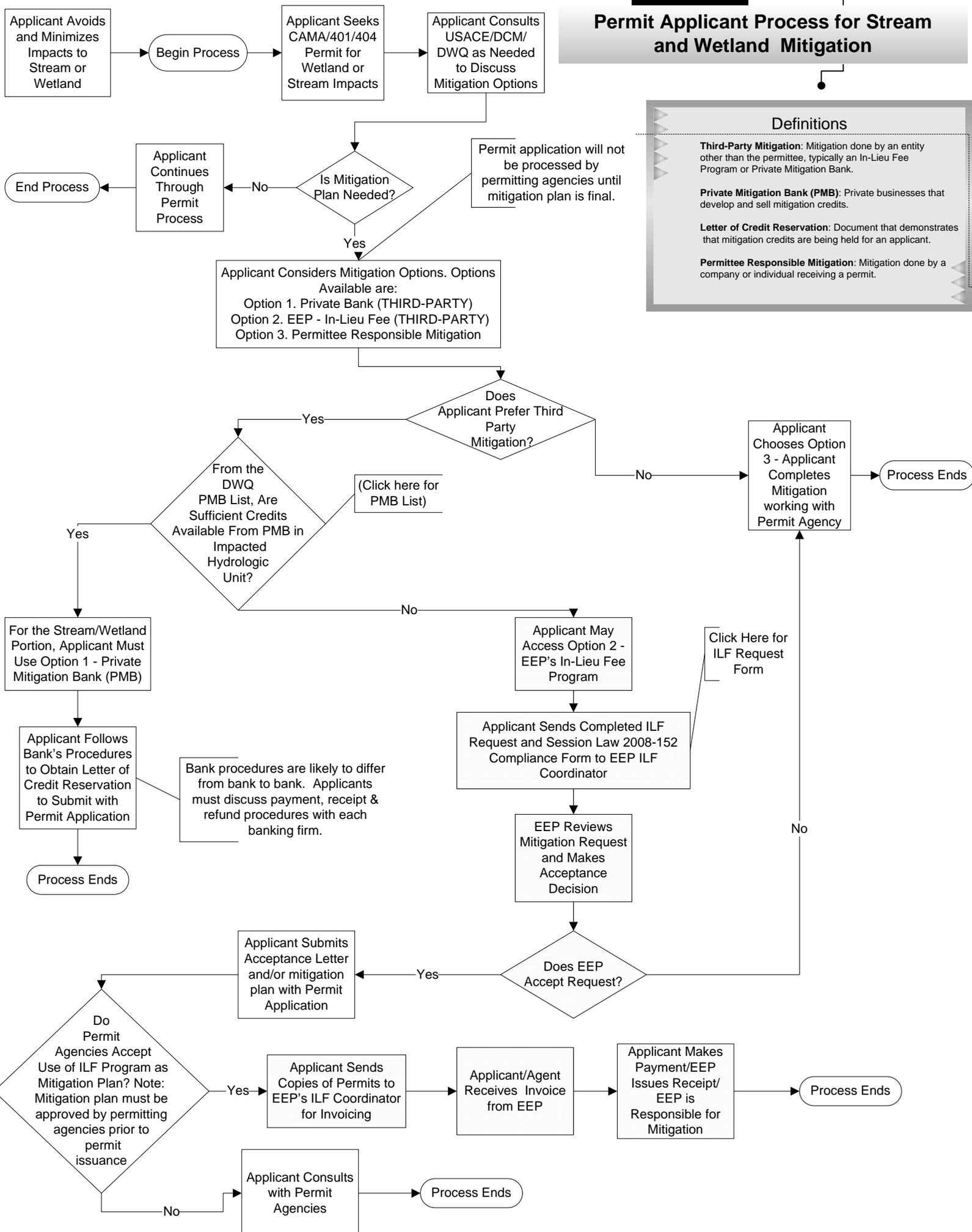
3. Applicants will need to contact mitigation banks operating in the eight-digit hydrologic unit where the impact will occur directly to determine credit availability prior to submitting an ILF request form to EEP for mitigation.
4. Applicants will be asked to verify that they have complied with SL 2008-152 upon submittal of an ILF request form to EEP. EEP's mitigation request form has been updated to include written acknowledgement by the applicant of the law's requirements and compliance with it.
5. EEP's acceptance letters and receipts have been revised to include the following statement: "You must also comply with all other state, federal or local government permits, regulations or authorizations associated with this activity including SL 2008-152, An Act to Promote Compensatory Mitigation by Private Mitigation Banks."
6. Once an applicant has determined that credits are not available from a private mitigation bank, the applicant may use EEP's ILF program, as long as the EEP acceptance letter is current (i.e., unexpired). EEP's acceptance letters currently expire nine months from issuance and can be renewed upon request from an applicant.
7. Mitigation acceptance letters that were issued by EEP prior to Oct.1, 2008 and that are unexpired are considered valid and will be honored.
8. Credits secured through EEP's ILF program are not transferable to another applicant.

#### Contacts

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# Permit Applicant Process for Stream and Wetland Mitigation



## Definitions

**Third-Party Mitigation:** Mitigation done by an entity other than the permittee, typically an In-Lieu Fee Program or Private Mitigation Bank.

**Private Mitigation Bank (PMB):** Private businesses that develop and sell mitigation credits.

**Letter of Credit Reservation:** Document that demonstrates that mitigation credits are being held for an applicant.

**Permittee Responsible Mitigation:** Mitigation done by a company or individual receiving a permit.