



NORTH CAROLINA  
Environmental Quality

ROY COOPER

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S. DANIEL SMITH

Director

March 1, 2021

TO: DEQ-DWR-Wetlands-Public Listserv

FROM: Paul Wojoski, 401 & Buffer Permitting Branch  
Amy Chapman, 401 & Buffer Transportation Permitting Branch

RE: Final Water Quality General Certifications for Revised Nationwide Permits Effective March 15, 2021

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The purpose of this Public Notice is outlined below. This notice is available electronically at: <https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-public-notices>.

The finalized 401 Water Quality General Certifications (GCs) applicable to the [reissuance and modification of Nationwide Permits](#) as published in the Federal Register (<https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>) have been posted on the Division of Water Resources (DWR) website at: <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/general>

On January 13, 2021, the US Army Corps of Engineers (USACE) published a final rule reissuing 12 existing Nationwide Permits and issuing four new Nationwide Permits (NWP). Prior to their issuance, the DWR received a request from the USACE to certify the NWPs and Regional Conditions. Accordingly, DWR provided a certification response for each of the 16 NWPs that were noticed by the USACE. As a result of the recent certification process, new GCs will become effective for the new NWPs on March 15, 2021.

Based on feedback from the EPA and the USACE regarding their interpretations of the new (effective September 11, 2020) Clean Water Act Section 401 Certification Rule, DWR has determined that the use of "written approvals" for coverage under GCs constitutes an Individual 401 Certification, therefore the new GCs have been issued accordingly. The requirement to obtain coverage under an Individual 401 Certification from DWR does not preclude the applicant from seeking coverage under a NWP from the USACE. DWR's application process will continue to be the same for both written approvals for coverage under GC and for Individual 401 Certifications: submittal of a PCN application form and associated documents; fee structure as stated on the DWR's website; and statutory review timelines as outlined in 15A NCAC 02H .0500 et seq. DWR's review process will remain the same with the addition of an electronic public notice in accordance with 15A NCAC 02H .0503(b). Individual 401 Certifications for Standard (Individual) USACE Section 404 Permits will continue to follow the USACE application procedure and will be processed by DWR as they have been processed



North Carolina Department of Environmental Quality | Division of Water Resources  
512 North Salisbury Street | 1617 Mail Service Center | Raleigh, North Carolina 27699-1617  
919.707.9000

previously. For those projects, the Public Notice issued by the USACE will continue to satisfy DWR's notice requirements in accordance with 15A NCAC 02H .0503.

DWR is currently developing a streamlined procedure for issuing public notices for applications for Individual Certifications that qualify for coverage under these new NWP's and will provide detailed information about the procedure in a forthcoming notification.

Please note that the USACE has not finalized reissuance/modification of the remaining 40 existing NWP's nor are they finalizing the proposed new NWP E at this time. Those 40 remaining NWP's continue to be in effect under the January 6, 2017, final rule. Also, the USACE Wilmington District has not reissued or modified any Regional General Permits at this time. The DWR's existing GCs issued in 2017 and 2019 will remain in effect for all corresponding 2017 NWP's that have not been revised by the USACE at this time and for all current USACE Wilmington District Regional General Permits. Existing GCs 4139 and 4175 have been modified to incorporate "red line deletions" to clarify that they do not apply to the updated NWP's. A table of current GCs and their effective dates can be found on the DWR's website <https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/general>

Please note that written approvals for 401 Certifications will be issued in accordance with the General Certification in effect on the date of authorization.

Please direct questions or comments to Sue Homewood at [sue.homewood@ncdenr.gov](mailto:sue.homewood@ncdenr.gov) or 336-776-9693.