

PERMIT REQUIREMENTS FOR DEVELOPMENT  
OF  
ENERGY AND OTHER SELECTED NATURAL RESOURCES  
FOR THE  
STATE OF NORTH CAROLINA

PREPARED FOR  
COASTAL PLAINS REGIONAL COMMISSION  
AND THE  
U.S. GEOLOGICAL SURVEY

BY CLAUDE TERRY ASSOCIATES

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# INTRODUCTION

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## 1.0 INTRODUCTION

This Guide has been produced to compile and summarize the statutes, regulations, and permitting processes of the State of North Carolina pertaining to environmental and land use elements. It is designed to assist government officials, administrators, business and industry, and citizens in understanding the state regulations and their application. The guide also indicates the relationship between certain state and federal regulations as well as the interrelationships between regulations and environmental/land use elements.

Table 1 is a matrix listing the state regulations and the environmental/land use elements they impact. The major area emphasized by the regulation is indicated by an X, associated areas by asterisks.

All state agencies having jurisdiction over the permits, licenses, and approvals described in this guidebook helped to prepare it, and they reviewed the final draft of each summary for accuracy and completeness. Users of this guidebook should be aware, however, that changes in the laws, rules and regulations, or regulatory personnel since the guidebook was published may cause significant changes in permit requirements.

The guidebook should not be construed as a legal document or a final authority on permits for the State of North Carolina: it is not intended to be a comprehensive reference to the specific requirements of each permit, but to provide concise, easy-to-use information on the state regulations that govern the development of natural resources. Before attempting to obtain a permit or begin any activity that might require a permit, you should contact the appropriate state agency for further details.

The guide provides a thorough overview of state regulatory and permitting processes in a format that provides information in outline form, based on the major components of regulations. Table 2 describes the format and information contained.

The objective of this guide is to describe state statutes and regulations. However, many of these are based on federal regulations or guidelines. This document does not attempt to provide an exhaustive list of the federal regulations which impact the environmental/land use elements addressed. Rather, the primary federal regulations which serve as a basis or provide guidelines for state legislation are listed under the appropriate elements. When dual permits, i.e., permits required by both federal and state legislation, are necessary, it will be noted in the text. It should be recognized that other federal statutes may also affect a particular element. The main purpose of this document, however, is to describe state permitting policies and requirements.

Table 1. Applicability of State Laws and Regulations to Environmental/Land Use Elements.

Environmental/ Land Use Element	Air Quality	Water Quality	Public Water Supply	Solid Waste	Hazardous Waste	Noise	Vector Control	Energy Resources	Mining	Geophysical Exploration	Oil Refineries	State Lakes Permit	Easement to Fill	Easement Over Water	Floodplain	Dam Safety	Coastal Management	Dredge & Fill	Endangered Species	Sedimentation	Archaeological/Historical	Forest Protection	Local Land Use	Substate Districts
State Law and Regulation	3.1	3.2	3.3	3.4	3.5	3.6	3.7	4.1	4.2	4.3	5.1	5.2	5.3	5.4	5.5	5.6	5.7	5.8	6.1	6.2	6.3	6.4	7.1	7.2
Water and Air Resources Act (Air Pollution Control Regulations)	X																							
Water and Air Resources Act (Water Pollution Control Regulations)		X	*																					
Water and Air Resources Act (Dredge and Fill Permit Regulations)				*	*		*					*	*	*	*		*	X		*				
Safe Drinking Water Act (Public Water Supplies)		*	X																					
Water Use Act (Capacity Use Area Water Withdrawal)		*	X					*	*								*							
Environmental Policy Act																							X	*
Well Construction Act (Well Construction Standards)		*	X																					
Solid Waste Management Act (Solid Waste Disposal Regulations)				X	*																			
Solid Waste Management Act (Hazardous Waste Management Regulations)				*	X																			
Public Health Laws (Control of Impounded Water)							X								*	*								
Oil and Gas Conservation Act								X	*	*				*										
Oil and Gas Conservation Act (Geophysical Exploration Regulations)								*	*	X														

X—Primary Applicability  
\*—Secondary Applicability

Table 1. Applicability of State Laws and Regulations to Environmental/Land Use Elements.

State Law and Regulation	Air Quality	Water Quality	Public Water Supply	Solid Waste	Hazardous Waste	Noise	Vector Control	Energy Resources	Mining	Geophysical Exploration	Oil Refineries	State Lakes Permit	Easement to Fill	Easement Over Water	Floodplain	Dam Safety	Coastal Management	Dredge & Fill	Endangered Species	Sedimentation	Archeological/Historical	Forest Protection	Local Land Use	Substate Districts
	3.1	3.2	3.3	3.4	3.5	3.6	3.7	4.1	4.2	4.3	5.1	5.2	5.3	5.4	5.5	5.6	5.7	5.8	6.1	6.2	6.3	6.4	7.1	7.2
Mining Act (Mining, Mineral Resources Regulations)								*	X	*														
Oil Pollution and Hazardous Substances Control Act (Oil Refinery Facilities Permit)	*	*			*			*			X						*							
State Parks and Forests Act (State Lakes Regulations)												X												
State Property and Construction Act (Easement of Fill Regulations)		*											X				*	*		*				
State Property and Construction Act (Other Easements Over Water)		*												X			*	*		*				
Floodway Regulation Act															X	*								
Coastal Area Management Act (Coastal Management Regulations)		*	*					*	*	*	*		*	*	*		X	*	*	*	*		*	
Dam Safety Law (Dam Safety Regulations)																*	X							
Wildlife Resources Act (Endangered and Threatened Species Regulations)																			X					
State Parks and Forests Act (Woodland Burning Regulations)	*																					X		
Sedimentation Control Law (Sedimentation Control Regulations)		*		*				*												X				
Archives and History Act																					X			

X—Primary Applicability  
 \*—Secondary Applicability

## Table 2. Regulatory Guide Format.

### INTRODUCTION

This section provides information regarding the legislative origin of particular programs along with a statement concerning the intent, purpose or policy of the program.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

The title and numerical citation of applicable federal legislation is provided in this section.

#### II. STATE

The title and numerical citation of applicable state legislation is provided in this section.

### TITLE OF REGULATION

Specific state regulations pertaining to a particular topic area are cited by title and administrative code number.

### ADMINISTERING AGENCY

The state agency responsible for administering a particular program or implementing certain regulations is specified here. This agency will be the primary contact for applicants seeking more detailed information concerning a particular permitting program. In the case of federal/state dual permitting programs, information concerning the relevant federal agency is provided.

### SUMMARY OF REGULATION

#### I. APPLICABILITY

This section lists the types of activities and/or localities which are subject to the general provisions of a permitting program or specific regulations.

#### II. REGULATORY REQUIREMENTS

The specific activities which are directly regulated by a permitting program and/or sets of regulations are summarized in this section. Included is a consideration of activities that are subject to specific criteria and standards as well as a listing of activities that are expressly prohibited by laws and regulations.

#### III. PERMIT REQUIREMENTS

This section details the procedures established for the granting of specific permits. Included is a discussion of:

Table 2. Continued

1. Time requirements
2. Applications/Information required
3. Agency review and processing procedures, including public hearings
4. Reporting/Monitoring requirements
5. Application fees
6. Appeal process
7. Enforcement and penalties
8. Additional procedures (variances, exemption, emergency orders, etc.)

**STATE POLICY AND PROCEDURES  
FOR CONSOLIDATED PERMIT PROGRAM**

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## 2.0 STATE POLICY AND PROCEDURES FOR CONSOLIDATED PERMIT PROGRAM

The Department of Natural Resources and Community Development has primary responsibility for stewardship of the state's natural resources. Numerous programs, regulations and policies in eighteen agencies are directed toward a commitment to maintain environmental quality while encouraging community development.

The Office of Regulatory Relations was created in January of 1980 in response to the need to more effectively coordinate the department's regulatory activities. The office has department-wide responsibilities within the framework of its four sections:

- Permit Information and Assistance;
- Environmental Assessment;
- Economic Assessment;
- Administrative Procedures Act Coordination.

The Permit Information and Assistance Section has as one of its primary functions the facilitation of effective communication and coordination among all regulatory agencies within the department and other state and federal regulatory agencies. It provides a central location and contact for information regarding environmental permits and department rules and regulations. The Section published the state's first Environmental Permit Directory in the spring of 1981.

Centralized assistance and coordination services are provided to the public and private sectors concerning specific permit procedures, requirements, and process status. A focal point is provided for the discussion, clarification, and resolution of issues and conflicts between an applicant and regulatory agencies prior to and during the permitting process.

The Office of Coastal Management established a consolidated application form which initiates several related state/federal permit processes. A joint application for a Coastal Major Development Permit initiates procedures for U.S. Army Corps of Engineers Section 10 and 404 permits, State Dredge & Fill Permit, 401 Certification, and State Easement to Fill. Additionally, agreements were reached with the Wilmington District to issue a General Section 404 permit for a specified category of projects in the coastal area. This eliminates the need for duplicate state/federal dredge and fill permits for those activities.

Two programs have been instituted within the Department of Administration that coordinate and consolidate the review of projects and programs seeking governmental funding. The federally mandated A-95 review pertains to those activities which involve federal funding or participation. The State Environmental Protection Act (SEPA) pertains to projects that involve state funding and that could significantly affect the quality of the state's environment. Both programs are designed to assure that each agency or community potentially affected by a program or project using state/federal funding has an opportunity to review the proposal and influence the manner in which the proposal is implemented.

## 2.1 State Clearinghouse

### INTRODUCTION

The State Clearinghouse is responsible for coordinating the governmental review of statewide environmental reports, assessments, and statements that involve federal participation. Participation may include funding, licensing, permitting, or other actions involving federal entities. Specific State approval of each project is required unless the State does not respond within the mandated review period, whereupon the project is approved by default. The intent of the review process is to develop the optimal project proposal by assuring that all relevant concerns are addressed in the application. Reviews are coordinated through appropriate state agencies and the eighteen Councils of Governments (substate planning districts).

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

The A-95 process is required by the provisions of the U. S. Office of Management and Budget Circular A-95 as promulgated through the authority of the Demonstration Cities and Metropolitan Development Act of 1966, Section 204; and Title IV of the Intergovernmental Cooperation Act of 1968.

#### II. STATE

None

### TITLE OF REGULATIONS

OMB Circular A-95

### ADMINISTERING AGENCY

Office of State Budget and Management  
State Clearinghouse  
116 West Jones Street  
Raleigh, N.C. 27611  
919/733-7061

### SUMMARY OF REVIEW PROCESS

#### I. APPLICABILITY

The review and comment process applies to certain programs and projects designated by the Office of Management and Budget, Washington, D.C., which involve federal funding and/or participation. OMB Circular A-95 is divided into four parts describing four types of coverage.

##### Part I. Project Notification and Review System (PNRS)

The PNRS deals with the state and areawide review of proposed applications for assistance from selected federal programs. The Catalog of Domestic Federal Assistance identifies approximately 200 federal programs that are subject to the PNRS. The PNRS requires that state and areawide clearinghouses be provided an opportunity to review and comment on proposed projects before the federal agency considers funding.

## Part II. Direct Federal Development

Direct Federal Development directs federal agencies undertaking federal development projects to consult with state and local governments that might be affected by the projects.

## Part III. State Plan.

The State Plan provides for clearinghouse review and gubernatorial approval of state plans required under certain federal formula-grant programs. The Catalog of Domestic Federal Assistance identifies approximately 80 such programs.

## Part IV. Coordinating of Planning in Multi-jurisdictional Areas.

This promotes coordination of federally assisted planning at the substate level. OMB Circular A-95 encourages governors of each state to establish multi-jurisdictional clearinghouses to coordinate A-95 reviews within their respective planning districts.

The entity applying for federal funds covered by the A-95 requirement has the responsibility for filing a "Notification of Intent" to apply with the State Clearinghouse.

## II. REVIEW PROCEDURES

The applicant submits a federal standard form 424 to the State Clearinghouse indicating a "Notification of Intent" to apply for federal funding. A brief summary of the proposed project is included in the form. The State Clearinghouse determines which agencies should review the proposed action, and copies of the notification are sent to those agencies and Councils of Government potentially interested in the project. Each agency is provided an opportunity to review the proposal.

State and Regional Clearinghouses have 30 days to review and comment on the proposal. If no questions arise the Clearinghouse(s) may indicate approval of the project within 30 days of receiving the notification. A sign off or approval by the Clearinghouse indicates the applicant has fulfilled all review responsibilities and may proceed to submit the formal application to the appropriate federal funding agency. Where an applicant has not received acknowledgement or response to a "Notification of Intent" from the Clearinghouse(s) within 30 days, it may assume that the Clearinghouse will have no comments and may proceed accordingly.

If negative comments are received, or if further information is needed for prudent assessment of the proposal, an additional 30 day review period may be requested by the Clearinghouse. This second stage review may require the submission of the complete application. Comments about the proposed project become part of the application and are sent to the funding agency by the applicant.

## 2.2 State Environmental Policy

### INTRODUCTION

The North Carolina State Environmental Policy Act (SEPA) pertains to projects/actions utilizing state funds that will significantly affect the state's environmental quality. It is the responsibility of each state agency to comply with this act and assure that an adequate review is coordinated through the State Clearinghouse, involving state, regional, and local agencies.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
North Carolina Environmental Policy Act of 1971 (Chapter .113A, Article 1, General Statutes of North Carolina, as amended)

### ADMINISTERING AGENCY

Office of State Budget and Management  
State Clearinghouse  
116 West Jones Street  
Raleigh, N.C. 27611  
919/733-7061

### SUMMARY OF REVIEW PROCESS

#### I. APPLICABILITY

The State Environmental Policy Act applies only to state agencies and to projects that involve state funding. All state-funded projects that could significantly affect the quality of the state's environment are required to be reviewed under SEPA. Major and minor actions are identified and listed by each agency in accordance with minimum criteria. Each state department determines which actions are major and, therefore, require an environmental assessment. Those actions determined to be minor by the agency need to be submitted for environmental review.

State-funded projects which also require federal participation are exempt from the SEPA requirement but must meet the review requirements of the federal agency addressing the National Environmental Policy Act.

#### II. REVIEW PROCEDURES

Major state actions submitted for review require a description of the proposed project and its location. An environmental impact statement should be prepared containing the following components: a summary of the report including fundings; Section I - a description of the proposed action including all background information to be used in analyzing the proposed project; Section II a presentation of the alternatives considered including a "no action" option; Section III - the environmental impacts of the action, both primary and secondary impacts; Section IV - a description of

significant impacts that cannot be avoided; Section V - measures proposed to reduce impacts; Section VI - a comparison of short and long term costs and benefits; Section VII - an identification of irreversible changes in natural resources; Section VIII - appendix.

In the event an agency determines an action is not significant, it may issue a Negative Declaration of Environmental Impact. This document includes: a narrative description of the proposed action; a listing of probable impacts; a rationale for not preparing an environmental assessment; a listing of adverse comments on the proposal; a statement that no environmental assessment is to be prepared; notice that the public can inspect the environmental review record; and a notice to be published in the North Carolina Environmental Bulletin.

If an agency is uncertain whether to prepare an impact statement or a negative declaration, a questionnaire can be circulated for review to interested agencies. Upon completion and review, the State Clearinghouse will determine what course of action is necessary for the specific agency.

Upon submittal of a draft EIS or negative declaration to the State Clearinghouse, each interested state agency is given 15 days to review and comment on the draft. The proposing agency then has an opportunity to respond and submit a final proposal, notice of which is published in the North Carolina Environmental Bulletin. Upon completion of review, the State Clearinghouse summarizes the comments and sends a copy to the initiating agency.

# ENVIRONMENTAL QUALITY MANAGEMENT

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### 3.0 ENVIRONMENTAL QUALITY MANAGEMENT

Environmental quality management is a vital government function that is necessary to protect the health, safety, and welfare of the general public, as well as to enhance the overall quality of life. Environmental quality management involves air, water, and land resources, public water supply, and the management of solid and hazardous wastes.

In North Carolina, the Department of Natural Resources and Community Development is responsible for the administration of air quality standards, water quality standards, land and water resources, and the various permit programs relating to these natural resources. The Division of Environmental Management is responsible for managing ground and surface water withdrawals in designated "critical use areas" and for permitting water well construction. The Division of Land Resources is responsible for mining, erosion control, mineral exploration, and dam safety.

The Division of Health Services of the Department of Human Resources is responsible for administering the regulations and standards relating to solid and hazardous waste management and the construction and operation of public water supply systems. In North Carolina, special legislation and regulations have also been adopted to control mosquito breeding areas to reduce the spread of mosquito-borne diseases. These regulations are also administered by the Division of Health Services.

The laws, regulations, and permit programs mentioned above are discussed in greater detail in the following chapters.

### 3.1 AIR QUALITY

#### INTRODUCTION

The North Carolina Water and Air Resources Act establishes the Division of Environmental Management (DEM) as the regulatory agency concerning air pollution control in North Carolina. Regulations for the control and abatement of air pollution in accordance with the state law establish ambient air quality standards, emission control standards, and procedures for compliance, monitoring, and reporting. Air quality permits are required for certain activities and facilities to insure that the air quality and emission control standards are met.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Clean Air Act (P.L. 95-95).

##### II. STATE

North Carolina Water and Air Resources Acts (Chapter 143, Article 21B, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

North Carolina Air Pollution Control Regulations (North Carolina Administrative Code, Title 15, Chapter 2, Subchapters D and H).

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
Post Office Box 27687  
Raleigh, N.C. 27611  
919/733-7120

#### SUMMARY OF REGULATION

##### I. Applicability

The regulations established by the DEM are applicable throughout North Carolina to those pollutants for which ambient air quality and new source performance standards have been established. Local air pollution control districts have been established in certain areas. The district has full responsibility for monitoring and controlling air quality within its boundaries. Specific emission control standards have been established for certain sources of pollution.

##### II. Regulatory Requirements

The regulations for the control of air pollution in North Carolina establish ambient air quality standards for sulfur oxides, suspended particulates, carbon monoxide, ozone, hydrocarbons, nitrogen dioxide, and lead. Specific standards have been established for several sources of particulates, including pulp and paper mills, sand and gravel operations, and other industrial processes. National emission standards for hazardous

air pollutants have been incorporated into the state regulations by reference, along with new source performance standards for certain sources.

Complex sources, including parking lots and decks, large housing developments and sport stadiums are also subject to certain regulations and requirements. Extensive regulations have been established to govern the emissions of volatile organic compounds.

### III. Permit Requirements

Air quality permits are required to:

1. Establish or operate any air contaminant source
2. Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;
3. Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;
4. Enter into a contract for the construction and installation of any air cleaning device or allow or cause such device to be constructed, installed or operated; and
5. Establish or operate any complex source as specified in the regulations.

Written permission is also required for certain open burning activities such as fire fighting training practices and certain forestry and land clearing activities (See Section 6.4).

#### Application:

Permit applications shall be made in triplicate on official forms of the commission and shall include plans and specifications putting forth all required data. Permit applications must be submitted to the Division of Environmental Management. The Division encourages pre-application meetings to discuss the permit procedure and requirements to avoid unnecessary delays once an application is submitted.

#### Information:

Detailed engineering plans and specifications must be submitted with the application. These plans and specifications must indicate design parameters, process flow diagrams, and proposed design criteria.

#### Review and Processing:

Once an application for an air quality permit has been submitted, the application is reviewed for completeness and to determine if the proposed source is subject to a Prevention of Significant Deterioration (PSD) permit. Application for a PSD permit will be processed concurrently with the state air quality permit.

Under certain cases, at the Director's discretion, a public hearing is required before a permit can be issued. A public hearing must be preceded by a 30-day notice, during which time the agency's analysis and draft

permit will be made available for public inspection in the appropriate regional office.

The final decision on all permits is based on the agency's analysis and any comments received during a hearing. The Director is responsible for the final decision.

Fee:  
None.

Time Requirement:

The Director shall review and take final action on all applications within 90 days following receipt of a completed application. If no action is taken within 90 days, the application shall be deemed approved. Average review time is approximately 60 days. A PSD permit may require 90 to 180 days for processing.

Appeal Process:

Any applicant aggrieved by a final decision shall have the right to a hearing upon making a demand within 30 days following the final decision. Further appeal can be made to the Superior Court.

### **3.2 Water Quality Standards and Regulations**

Water quality management in North Carolina is primarily the responsibility of the Division of Environmental Management (DEM) of the Department of Natural Resources and Community Development. In certain instances, the DEM works in cooperation with other divisions.

Legislative authority concerning water quality management is contained in the North Carolina Water and Air Resources Act (Chapter 143, Article 21, General Statutes of North Carolina, as amended). This law establishes the powers and duties of the DEM and sets the framework for establishing regulations and standards pertaining to water quality.

To implement the laws and policies pertaining to water quality, the Environmental Management Commission has instituted three regulatory programs in North Carolina. The National Pollutant Discharge Elimination System (NPDES) permit, required by every discharger of wastewater into state waters, is a federal program administered in North Carolina by DEM. The DEM has also instituted a permit program for wastewater not discharged to surface waters. Finally, the 401 certification program provides for state review of the water quality implications of projects and activities that require a federal permit or license.

### 3.2.1 NPDES Permit Program

#### INTRODUCTION

The National Pollutant Discharge Elimination System (NPDES) is a federal program established to control discharges into state waters. Under this system, a permit is required for all point source discharges for either industrial wastewater or domestic sewage. North Carolina received authority to administer the NPDES permit program from USEPA Region IV in 1975. The Division of Environmental Management has adopted regulations establishing application criteria and review procedures for all NPDES permits. A construction permit for wastewater treatment plants is included with an NPDES permit.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Water Pollution Control Act (P.L. 92-500)

##### II. STATE

North Carolina Water and Air Resources Act (Chapter 143, Article 21, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

North Carolina Water Pollution Control Regulations (North Carolina Administrative Code, Title 15, Chapter 2, Subchapter D) North Carolina Water Quality Standards.

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
P.O. Box 27687  
Raleigh, N. C. 27611  
919/733-7120

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The NPDES permit program regulations are applicable to all state waters throughout North Carolina. An NPDES permit is required to construct and to operate any facility that will discharge waste or any pollutant to surface waters.

##### II. REGULATORY REQUIREMENTS

The Water Pollution Control Regulations adopted by the Environmental Management Commission establish: activities which require an NPDES permit; review and processing procedures for permit applications; and investigation, monitoring, and reporting requirements.

Effluent limitations and standards are established under another set of regulations. Federal effluent standards for effluent-limited stream segments are incorporated by reference. State water quality standards have

been adopted for each stream in the state. The effluent limitations for each permit must assure compliance with both effluent standards and water quality standards; the more stringent of the two prevail and are determined on a case-by-case basis. Federal regulations for concentrated animal feeding operations are also adopted by reference. Specific permit application evaluation procedures are outlined for animal feeding operations.

### III. PERMIT REQUIREMENTS

#### Application:

Application for an NPDES permit must be submitted on the appropriate forms to the Director, Division of Environmental Management, along with any additional required information.

#### Information Required:

In addition to the information necessary to complete the required application forms, applicants for projects requiring construction of control facilities shall file, in triplicate, an engineering proposal including:

1. a description of the origin and type of waste discharged;
2. a description of the proposed treatment works including size and arrangement of major components;
3. projected evaluation of the effect of the discharge upon the receiving waters;
4. a scale location plan; and
5. site plan of the proposed treatment works.

Applicants for permits for certain new source discharges must file an environmental assessment which shall contain:

1. description of the proposed new source;
2. alternative treatment or other control methods;
3. primary and secondary environmental impacts;
4. unavoidable adverse impacts and mitigative measures; and
5. irreversible and irretrievable commitments of aquatic resources.

#### Review and Processing:

Applicants for an NPDES permit are advised to initiate the review process by a preliminary conference with the Division of Environmental Management regional office. The purpose of the preliminary conference is to establish an initial contact and to provide the industry with information concerning the necessary permits. After the preliminary discussions, the application is reviewed for completeness by the Discharge Permits Unit of the Water Quality Section. Copies of the complete application are forwarded to USEPA and the appropriate regional engineer. The Regional Engineer and his staff review NPDES applications and the drafting of NPDES permits.

Public notice of the draft NPDES permit is given to the Environmental Mailing List, Clerk of the Court, newspapers, other state agencies, local officials, and other interested parties. For waste discharges over 50,000 gpd, two copies of the draft permit, fact sheets, and public notice are sent to USEPA for review and comment. A 30-day public comment period follows the publication of public notice. If no hearing is held, final action on the permit may be as early as the 45th day but no later than the 60th day. If comments warrant, the Director may hold a public hearing. Thirty-days notice is required prior to the hearing and the record is held

open for 30 days following the hearing for additional written comments. After the record is closed and the hearing officer makes his recommendation, the Director makes the final decision on issuing or denying the permit. The Director must make a final decision on issuing or denying the permit within 90 days following the close of the hearing record.

Fee:

No filing fees, but applicant must reimburse for cost of public notice.

Time Requirement:

Permit applications are normally processed within 90 days (major or complex permits usually take longer). Applicants are advised to file an application 180 days before they wish to begin the activity for which the permit is required (e.g., construct treatment works, begin discharge, etc.).

Adjudicatory Process:

An applicant whose permit is denied or whose permit is granted with conditions he deems unacceptable shall have the right to an adjudicatory hearing on the specific items contended. Requests for such hearing must be made in 30 days.

Appeal Hearing:

Any decision of a hearing officer made as a result of an adjudicatory hearing may be appealed by any party to the NPDES committee of the Environmental Management Commission upon filing a written demand within ten days of receipt of notice of the decision.

### 3.2.2 Permits for Wastewater Not Discharged to Surface Waters

#### INTRODUCTION

The North Carolina Water Pollution Control Regulations require permits before construction or operation of sewer systems, sewer system extensions, treatment works, or disposal systems which do not discharge to surface waters.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Water Pollution Control Act (P.L. 92-500)

##### II. STATE

North Carolina Water and Air Resources Act (Chapter 143, Article 21, Part 1m (General Statutes of North Carolina, as amended)).

#### TITLE OF REGULATION

North Carolina Water Pollution Control Regulations (North Carolina Administrative Code, Title 15, Chapter 2, Subchapter H); North Carolina Water Quality Standards.

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
P.O. Box 27687  
Raleigh, N.C. 27611  
919/733-7120

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

These regulations are applicable to any sewer system, sewer system extension, disposal system, and treatment works that do not discharge to surface waters of the state. If the treatment system is over 3,000 gallons capacity, these regulations apply; if under 3,000 gallons, Department of Human Resources regulations, administered by local health boards, apply.

##### II. REGULATORY REQUIREMENTS

The North Carolina Water Pollution Control Regulations require permits to construct or operate any sewer system, treatment works, or disposal system which does not discharge to the surface waters of the state. The regulations outline the application requirements, permit review and processing procedure, and reporting and monitoring requirements.

##### III. PERMIT REQUIREMENTS

###### Application:

Application for a permit must be made in duplicate on an official form and submitted to the Director of the Division of Environmental Management, along with other required information.

Information Required:

In addition to the required application, applicants must supply the design data, specifications, and plan information for sewer and sewer extensions, pumping stations, septic tank/ground absorption systems, spray irrigation/land application systems, and recycle disposal systems.

Review and Processing:

Once the application has been submitted, the staff of the Water Quality Section shall review the application for completeness. Applicants will be notified of any deficiencies in the application. Copies of the completed application and supporting materials are sent to the Ground Water Section for review and comment. For disposal systems and treatment works, the staff of the Water Quality Section will make an on-site evaluation jointly with the Ground Water Section. A decision to issue or deny the permit along with any conditions necessary for issuance is determined by the staff, with consideration of the Ground Water Section comments. The Director of the Division of Environmental Management must give final authorization to the permit.

Fee:

None

Time Requirement:

The Director must take final action on all applications not later than 90 days following receipt of an adequate application and supporting documentation.

Appeal Process:

Applicants may request an adjudicatory hearing by giving written notice to the Director within 30 days following notice of final decision. Further appeal may be made to the Superior Court.

### 3.2.3 401 Water Quality Certification

#### INTRODUCTION

The purpose of the 401 Water Quality Certification Program (required under Section 401 of the Federal Clean Water Act) is to insure that federally licensed projects that resulting in discharges to state waters employ sufficient measures to maintain water quality standards established by the state. In North Carolina, the 401 certification program is managed by the Division of Environmental Management in cooperation with other appropriate state agencies. The majority of certifications involve dredge and fill operations.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act, P.L. 92-500).

##### II. STATE

North Carolina Water and Air Resources Act (Chapter 143, Article 21, Part 1, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

North Carolina Water Pollution Control Regulations (North Carolina Administrative Code, Title 15, Chapter 2, Subsection H); Water Quality Certification.

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
Post Office Box 27687  
Raleigh, N.C. 27611  
919/733-7015

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

Any applicant for a federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities, which may result in a discharge to state waters, must first obtain state certification that such discharge will comply with the applicable provisions of state laws concerning water quality standards.

##### II. REGULATORY REQUIREMENTS

In accordance with Section 401 of the Federal Water Pollution Control Act, certification by the state must set forth any effluent and other limitations and monitoring requirements necessary to assure compliance with the Act and with other appropriate requirements of state laws. These effluent limitations and monitoring requirements become conditions on the federal license or permit.

State regulations establish application requirements and review and processing procedures.

### III. PERMIT REQUIREMENTS

#### Application:

Any applicant for 401 certification must file an original and six copies of an application for certification with the Environmental Management Commission in Raleigh. Copies of the application will be forwarded to the Division of Marine Fisheries, the Board of Health, the Wildlife Resources Commission, and the appropriate federal agencies. A detailed location map must accompany all applications.

#### Information Required:

The application requires the following information:

1. description of the activity for which certification is sought
2. whether the discharge is occurring or proposed
3. location of the discharge, including the name of the receiving waters
4. description of the receiving waters
5. description of the waste treatment facilities, if any
6. description of the discharge
7. names and addresses of adjoining riparian owners.

The required map must indicate the following:

1. boundaries of the land owned or used by the applicant;
2. location, dimensions and type of any structure used in connection with the activity;
3. location or proposed location of any discharge conduit;
4. location and extent of receiving waters.

#### Review and Processing:

Once the completed application has been received by the Commission, a public notice will be published one time in a newspaper of general circulation in the appropriate county. Publication of the notice will be within 20 days of receipt of the application, and a public comment period of 30 days shall follow the date of publication.

If it is determined that a public hearing is warranted, notice of the hearing will be provided at least 30 days in advance by publication in a newspaper of general circulation in the appropriate county. The Commission will also provide written notice of the hearing to interested persons and corporations. The public record will be held open for 30 days following the public hearing to receive additional written comments. Final decision on the application for certification is the responsibility of the Commission.

#### Fee:

No fee is required. However, the applicant must reimburse the Commission for the cost of all public notices.

#### Time Requirement:

Final decision on all applications is required within 130 days following receipt of the application, unless a public hearing is required. All applications must be granted or denied within 130 days after a public

hearing unless circumstances require an extension. If no hearing is held, final decision is usually made 35 to 40 days after public notice.

Appeal Process:

Applicants denied certification without a prior hearing may request a hearing, in writing, within ten days after notification of denial. Further appeal may be made to the Superior Court.

### 3.3 Public Water Supply

#### INTRODUCTION

The North Carolina Safe Drinking Water Act was enacted to implement the requirements of the Federal Safe Drinking Water Act and to insure that public water supply systems are designed and operated so as to protect the public health, safety, and welfare. To implement the act, the Department of Human Resources has adopted standards and rules governing the design and operation of public water supply systems. Plans and specifications for the construction, alteration, or expansion of any public water supply system must be approved before construction can commence.

For certain projects, related permits may be required for water use in a designated "capacity use area" and for water well construction from the Department of Natural Resources and Community Development. These permits would be in addition to the plan approval discussed in this section. Water use permits are discussed in detail in Section 3.3.2, while well construction permits are discussed in Section 3.3.1.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Safe Drinking Water Act (P.L. 93-532, as amended by P.L. 95-190).

##### II. STATE

North Carolina Safe Drinking Water Act (Chapter 130, Article 13D, General Statute of North Carolina, as amended).

#### TITLE OF REGULATION

Rules Governing Public Water Supplies (North Carolina Administrative Code, Title 10, Chapter 10, Subchapter D) as amended.

#### ADMINISTERING AGENCY

Director  
Environmental Health Section  
Department of Human Resources  
P.O. Box 2091  
Raleigh, N.C. 27602  
919/733-2460

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

Rules pertaining to public water supply apply to any system that provides piped water for human consumption if the system has at least 15 service connections or regularly serves at least 25 individuals daily at least 60 days out of a year. These rules and standards are applicable throughout North Carolina.

## II. REGULATORY REQUIREMENTS

The Rules Governing Public Water Supplies establish water quality standards, design criteria, and acceptable treatment procedures for public water supply systems. Specific standards and criteria have been established for:

1. fluoridation of public water supplies;
2. water supply design;
3. protection of filtered and unfiltered water supplies;
4. water quality;
5. surface water treatment facilities;
6. hydropneumatic storage tanks;
7. distribution systems.

A sanitary survey is required for proposed locations for surface or groundwater sources. Once a particular public water supply watershed is designated, permitted uses or activities in that watershed are specified. The operator of the water supply system must hold a valid operator's certificate and is responsible for testing, analyzing, monitoring, and preparing periodic reports concerning standards.

## III. PERMIT REQUIREMENTS

Although an actual permit is not required, all persons intending to construct, alter, or expand a public water supply system must provide notice and have the plans and specifications approved prior to construction.

### Application:

Three copies of "Application for Approval of Plans and Specifications for Water Supply Systems" must be completed and submitted along with other required documents to the Division of Health Services.

### Information Required:

Three copies of a detailed engineering report, plans, and specifications must be submitted along with the required application form.

The engineer's report must contain the following information where applicable:

1. description of any existing water system related to the project;
2. identification of the municipality, community, or area to be served by the proposed water system;
3. the name and address of the owner;
4. a description of the nature of the establishments and of the area to be served by the proposed water system;
5. provisions for future extension or expansion of the water system;
6. a projection of future water demand or requirements for service;
7. any alternate plans for meeting the water supply requirements of the area;
8. financial consideration of the project;
9. population records and trends, present and anticipated future water demand, present and future yields of source or sources of water supply;
10. character of source or sources of water supply;
11. proposed water treatment processes.

Plans for water supply systems shall consist of the following:

1. a preliminary plat plan or map showing the location of proposed sources of water supply;
2. a general map of the entire water system showing layout and all pertinent topographic features;
3. detail map of source or sources of water supply; and
4. layout and detail plans for intakes, dams, reservoirs, elevated storage tanks, standpipes, pumping stations, treatment plants, transmission pipelines, distribution mains, valves, appurtenances and their relation to any existing water system, and the location of all known existing structures or installations and natural barriers that might interfere with the proposed construction.

Complete detailed specifications for materials, equipment, workmanship, test procedures and specified test results shall accompany the plans. The specifications shall include, where applicable:

1. the design and number of chemical feeders, mixing devices, flocculators, pumps, motors, pipes, valves, filter media, filter controls, laboratory facilities and equipment, and water quality control equipment and devices;
2. provision for continuing with minimum interruption the operation of existing water supply facilities during construction of additional facilities;
3. safety devices and equipment; and
4. procedure for disinfection of tanks, basins, filters, wells and pipes.

Review and Processing:

Applications, reports, plans, and specifications submitted for approval are reviewed by the Division of Health Services, Engineering Planning Branch, without public hearing or comment. Before construction can begin, the well site or sites must be inspected and approved by an authorized representative of the Environmental Health Section. A plot plan of the proposed site or sites must be furnished to the authorized representative at the time of his inspection. One copy of the plans and specifications will be certified and returned to the applicant upon approval.

Fee:  
None.

Time Requirements:

Average review time is approximately 30 days.

Appeal Process:

Appeal of any decisions can be made by requesting a formal hearing before the Department of Human Resources.

### 3.3.1 Well Construction Permit

#### INTRODUCTION

The North Carolina Well Construction Act was established to protect the public welfare, safety, and health and to protect and beneficially develop the groundwater resources of the state. The Environmental Management Commission of the Department of Natural Resources and Community Development has been authorized to adopt standards and regulations to implement the act.

#### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
Well Construction Act (Chapter 87, Article 7, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

Well Construction Standards (North Carolina Administrative Code, Title 15, Subchapter C).

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-7015

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

Provisions of the North Carolina Well Construction Act and the Well Construction Standards are applicable to all water wells throughout North Carolina. Well Construction Standards specifically apply to the location, construction, repair, and abandonment of wells and the installation of pumps and pumping equipment.

##### II. REGULATORY REQUIREMENTS

The North Carolina Well Construction Standards establish specific requirements concerning well construction techniques and procedures. Every person or corporation engaged in the business of drilling, boring, coring, or constructing wells in any manner with the use of power machinery in the state must register annually with the Department of Natural Resources and Community Development. All persons engaged in the business of installing and

repairing pumps and other equipment in wells must also be registered with the Department.

Standards of construction for water supply wells provide specific requirements pertaining to well location, source of water, drilling and casing techniques, grouting, well screens, gravel packed wells, large diameter wells cased with concrete pipe, and well head completion and equipment. Additional standards of construction apply to recharge and disposal wells, observation wells, test holes and borings, dewatering and depressurizing wells, elevator shafts, and oil and gas wells. Pumps and pumping equipment also have specific requirements.

Detailed standards have been established for well tests of yields, chlorination of wells, well maintenance and repair and the abandonment of wells. Well cuttings and reports are required for most wells, and reports are required when wells are abandoned or repaired.

### III. PERMIT REQUIREMENTS

A permit shall be obtained from the department prior to the:

1. construction of any water-well or well system with a designed capacity of 100,000 gallons per day (gpd) or greater;
2. construction of any well added to an existing system when the total designed capacity of such existing well system and added well will equal or exceed 100,000 gpd;
3. construction of any test well if the water requirements of the production well will be 100,000 gpd or greater;
4. construction of any well in a geographical area where the department finds, after public hearings, such permission to be reasonably necessary to protect the groundwater resources and the public welfare, safety, and health;
5. use of any well for recharge, injection or disposal purposes; or
6. withdrawal of ground or surface water in a designated "capacity use area" in accordance with regulations established under the provisions of Part 2, Article 21, Chapter 143, North Carolina General Statutes.

#### Application:

An application for a permit must be submitted by the owner or his agent in duplicate to the Division of Environmental Management.

#### Information Required:

Applications for well construction permits must include the following:

1. the number of existing wells and their respective yields in the system;
2. a diagram showing the location of each existing well in the system;
3. the estimated withdrawal rate of each proposed well;
4. a diagram of construction for each proposed well;
5. a location diagram of each proposed well showing direction and distance to other wells in the system and two nearby map reference points (such as roads, intersections, or streams);
6. all existing water-supply wells within a radius of 1,000 feet of each proposed well;
7. the owner's name and mailing address; and
8. such other information as the department may reasonably deem necessary.

Review and Processing:

Applications for well construction permits are reviewed by the Permits and Engineering Branch of the Division of Environmental Management. Public hearings or comment periods are not required. Certain operational data and records-keeping responsibilities are included as permit conditions.

Fee:

None.

Time Requirement:

A statutory limit of 15 days has been established for the review of well construction permit applications. Average review period is seven days.

Appeal Process:

The Division of Environmental Management will usually work with the applicant order to insure acceptance of the application. Appeal of any decision or permit conditions can be made by requesting a formal hearing.

### 3.3.2 Water Use Permit

#### INTRODUCTION

The Water Use Act of 1967 establishes the right of the Environmental Management Commission to designate and delineate "capacity use areas" as they pertain to surface water and groundwater resources and to adopt regulations specific to each capacity use area. The adopted regulations require permits for major water users in capacity use areas. These regulations provide for the management of water withdrawal and uses in designated capacity use areas to conserve water resources in the areas and to maintain conditions that are conducive to the orderly development and beneficial use of these resources.

#### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
Water Use Act of 1967 (Chapter 143, Article 21, Part 2, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

Capacity Use Area Water Withdrawal (North Carolina Administrative Code, Title 15, Chapter 2, subchapter E).

#### ADMINISTERING AGENCY

Director  
Division of Environmental Management  
Department of Natural Resources and Community Development  
P.O. Box 27687  
Raleigh, N.C. 27611  
919/733-7015

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The Water Use Act of 1967 and the corresponding regulations apply to designated "capacity use areas." The only existing "capacity use area" in the state is in the coastal area, including Beaufort, Pamlico, and Washington Counties and portions of Carteret, Craven, Hyde, Martin, and Tyrrell Counties.

##### II. REGULATORY REQUIREMENTS

Persons withdrawing 100,000 gallons per day (gpd) or less are not required to obtain a water use permit. Persons withdrawing in excess of 100,000 gpd must obtain a water use permit (note: groundwater users must obtain a well construction permit for all wells other than individual domestic water supply wells). Specific regulations and requirements have been established to regulate water use in the only designated "capacity use area." Water users in this area are also subject to certain withdrawal, well-spacing,

water level controls, and reporting requirements.

Other activities involving construction or installation or works of improvement which may significantly affect the quantity or quality of water must be approved by the Environmental Management Commission. These include, but are not necessarily limited to: surface drainage projects, subsurface drainage projects, well mining projects, and excavation projects.

### III. PERMIT REQUIREMENTS

#### Application:

Application for a water use permit must be submitted on an official form to the Division of Environmental Management. The application must be filed prior to project initiation. A preapplication technical conference may be desirable.

#### Information Required:

The application must describe the purpose or purposes for which the water will be used and justify the quantity needed for each purpose. The application must also indicate whether the proposed use is consumptive or non-consumptive.

#### Review and Processing:

When sufficient evidence is provided by the applicant that the water withdrawn is not consumptively used, a permit shall be issued by the Environmental Management Commission without a hearing or other conditions. If the water is to be used consumptively, notice of the application is given to other water use permit holders in the affected area. Notified persons have 15 days after receipt of the notice to request a public hearing. The Environmental Management Commission has the power to grant the permit with conditions necessary to implement the regulations, grant a temporary permit for a specified length of time, to modify or revoke any permit upon not less than 60 days written notice, or to deny any permit if the application or the effects of the proposed water use is found to be contrary to public interest.

#### Fee:

None.

#### Time Requirement:

Processing period is usually 30 days from receipt of completed application.

#### Appeal Process:

Any water user wishing to contest the proposed action or any applicant aggrieved by the Commission's decision is entitled to a formal hearing upon request. Further appeal can be made to the Superior Court.

### 3.4 Solid Waste Management

#### INTRODUCTION

The North Carolina Solid Waste Management Act authorizes the establishment of a specific office within the Department of Human Services to administer the laws and regulations pertaining to solid waste management. Regulations established in accordance with this act require permits to be issued prior to the establishment and operation of solid waste management facilities and incinerators. Specific operation and development requirements and procedures have been established, including water quality monitoring of surface and groundwater resources.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Resource Conservation and Recovery Act of 1976 (P.L. 94-580, as amended).

##### II. STATE

North Carolina Solid Waste Management Act (Chapter 130, Article 13 B, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

North Carolina Solid Waste Disposal Regulations (North Carolina Administrative Code, Title 10, Chapter 10, Subchapter C).

#### ADMINISTERING AGENCY

Director  
Division of Health Services  
Department of Human Resources  
P.O. Box 2091  
Raleigh, North Carolina 27602  
919/733-2178

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

These regulations apply to all persons disposing solid waste into or on land that may enter the environment, including land, air, surface, or groundwaters of North Carolina.

##### II. REGULATORY REQUIREMENTS

The North Carolina Solid Waste Disposal Regulations establish general and specific standards and requirements for solid waste handling, sanitary landfills, and incinerators. The regulations establish specific requirements concerning the storage, collection, and transportation of solid waste in the state. Permits are required for the establishment and operation of solid waste disposal facilities and incinerators. Once a permit has been issued, specific regulations outline requirements for site preparation, landfill operation, construction of facilities, and the handling of hazardous wastes (subject to additional regulation--see Section 3.5). Specific requirements have been established concerning incinerator operation.

Extensive regulations have been established concerning violations, revocation of permits and the assessment of penalties. Monitoring of surface streams on-site or streams receiving surface runoff is required prior to facility operation and at least annually thereafter. Sites with poor soil characteristics may require groundwater monitoring wells.

### III. PERMIT REQUIREMENTS

#### Application:

Approval of site and operational plans is required before a permit to establish a solid waste disposal facility can be granted. Application for a permit is made by submitting four copies of the required maps and plans to the Division of Health Services.

#### Information Required:

Specific information concerning the proposed site and the operation of the facility is required before a permit is granted. Site information required includes:

1. map indicating the extent of property ownership, surrounding land use and zoning, and the location of all buildings;
2. soil borings and classifications; and
3. location of wells, floodplains, watercourses, rock outcroppings, and other general topographic details.

Required operational plan must include:

1. plat plan;
2. contour map of original topography;
3. cross-section drawings showing original contours, depth to water table, proposed excavation depths, and proposed finished elevations;
4. location of proposed utilities and on-site structures;
5. proposed operation procedures and methods;
6. sedimentation and erosion control measures;
7. reclamation measures; and
8. number and location of groundwater monitoring wells, when required.

A written report must accompany the required plans and include:

1. population and area served;
2. anticipated type, quantity, and source of material to be disposed;
3. equipment to be used at the site;
4. projected use of completed landfill site;
5. lifetime of the project; and
6. description of operation and completion of the landfill.

Plans submitted for incinerators must be accompanied by the necessary air quality permit from the Division of Environmental Management and written certification from the appropriate local government that the proposed incinerator is in conformance with the local zoning requirements.

#### Review and Processing:

Once the complete plans and any additional required information has been submitted, the site must be inspected by an authorized representative of the Division of Health Services. A permit to operate a solid waste disposal facility shall be issued after the site and operational plans have been approved, and it has been determined that the facility can be operated in accordance with the appropriate regulations. Approval or denial of the per-

mit will be made in writing to the applicant. Permit denials must indicate the inadequacies of the plans and suggest methods of revisions to meet approval.

Fee:  
None

Time Requirement:  
Normal processing time is approximately 60 to 90 days.

Appeal Process:  
A formal hearing may be requested in writing to the Department of Human Services. Further appeal can be made to the Superior Court.

### 3.5 Hazardous Waste Management

#### INTRODUCTION

The North Carolina Solid Waste Management Act establishes the Department of Human Resources as the administering agency concerned with hazardous waste management in North Carolina. The state act outlines the general requirements and purposes of the Federal Resource Conservation and Recovery Act concerning hazardous waste management. The Department has adopted most federal regulations governing hazardous waste by reference in the North Carolina Administrative Code. The state act has mandated that the hazardous waste management program in North Carolina will not be any more comprehensive or stringent than the program prescribed under the federal act.

The regulation of toxic substances is authorized under several aspects of state law. Any toxic substance emitted into the air is controlled by the North Carolina Air Pollution Control Regulations (Chapter 3.1). Toxic substances discharged into the waters of the state are regulated in accordance to the Water Pollution Control Regulations and the NPDES permit program (Chapter 3.2).

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

Resource Conservation and Recovery Act of 1976; P.L. 94-580, as amended.

##### II. STATE

North Carolina Solid Waste Management Act (Chapter 130, Article 13B, General Statutes of North Carolina, as amended).

#### TITLE OF REGULATION

North Carolina Hazardous Waste Management Regulation (North Carolina Administrative Code, Title 10, Subchapter 10F).

#### ADMINISTERING AGENCY

Director  
Division of Health Services  
Department of Human Resources  
P.O. Box 2091  
Raleigh, N.C. 27602  
919/733-2178

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

The North Carolina Hazardous Waste Management Regulations apply to any person in North Carolina who generates, transports, stores, treats, or disposes a hazardous waste.

##### II. REGULATORY REQUIREMENTS

The Department of Human Resources has essentially adopted the complete set of federal regulations concerning the management of hazardous wastes.

These regulations establish general and specific requirements concerning the identification, generation, transportation, and management of hazardous wastes. Criteria are established for the identification of hazardous wastes based on characteristics of ignitability, corrosivity, reactivity, or toxicity. North Carolina has recognized and accepted the list of hazardous wastes promulgated by the Administrator of EPA. Notification of any hazardous waste management or generation is required by EPA. All transportation of hazardous wastes is to be accompanied by a manifest, as specified by EPA.

Generators of hazardous wastes are subject to specific requirements concerning the determination of hazardous waste, the use of the EPA identification number, packaging and labeling in preparation for transportation, and recordkeeping and reporting. Special conditions have been established for international shipments.

Extensive regulations, requirements, and standards have been established concerning the storage, treatment, and disposal of hazardous wastes. General facility standards have been established concerning waste analysis, security, inspection requirements, personnel training, and the handling of special wastes. Contingency plans, disaster preparedness and prevention, and emergency procedures are required of all owners and operators of hazardous waste management facilities. Groundwater monitoring programs and closure and port-closure procedures and requirements have also been established for all facilities. Standards and regulations have also been established to specifically control the use and maintenance of tanks, containers, surface impoundments, waste piles, land treatment, landfills, and incinerators.

The standards and regulations established for hazardous waste management facilities are interim standards established in accordance with EPA regulations. Final standards will be established in North Carolina as EPA promulgates their final regulations and standards for hazardous wastes.

### III. PERMIT REQUIREMENTS

A permit is required from the Department of Human Resources for the treatment, storage, or disposal of hazardous waste in North Carolina. Currently, existing hazardous waste management facilities are permitted on an interim basis until EPA promulgates final standards. A final hazardous waste management permit shall be effective for a fixed term not to exceed ten years.

#### Application:

Hazardous waste management facilities in operation at the time the Interim Facility Standards were promulgated (November 21, 1980) received interim status if proper notification was given to EPA and if the operator was in compliance with the requirements governing submission of Part A of the permit application. Once the Final Facility Standards have been promulgated, existing facilities operating under interim status will be required to submit Part B of the permit application to obtain a final operating permit. Development of new facilities after the promulgation of the Final Facility Standards will require submission of both Parts A and B. Application for a permit is made to the Division of Health Services, Solid and Hazardous Waste Management Branch.

Information Required:

Part A of the permit application requires general information about the facility and the company operating the facility. Specific information includes:

1. a listing of all permits or construction approvals received or applied for under any appropriate environmental regulatory programs;
2. a description of the processes to be used and the design capacity;
3. specification of the hazardous waste to be managed;
4. an estimate of the quantity of waste to be managed annually; and
5. a topographic map extending one mile beyond the property boundaries indicating the location of facilities, intake and discharge water bodies, and drinking water wells listed in public records.

Part B of the application for permit requires more detailed information concerning the management processes and operating procedures. Specific requirements include:

1. chemical and physical analyses of the hazardous waste to be managed;
2. description of security procedures;
3. general inspection schedule;
4. contingency plan;
5. a description of safety procedures and disaster mitigation measures and equipment; and
6. traffic pattern, volume and control information.

Review and Processing:

Once the complete application is received in Raleigh, it is determined whether or not additional air/water permits are required (e.g., incinerators require an air quality permit in addition to the hazardous waste permit). Other permit applications are processed concurrently with the hazardous waste permit.

Public notice of the application is published, allowing 30 days for comments. Following the public comment period, a public hearing is held in the county in which the facility is to be located. Methods of notification and the notice content is detailed in the regulations. The public record will remain open for ten days following the public hearing.

A final decision is the responsibility of the Director of the Division of Health Services.

Fee:  
None

Time Requirement:

Application processing time depends on the degree of technical detail and the need for additional permits. An average review period of 90 days is anticipated.

Appeal Process:

Appeal of the Director's final decision can be made by requesting a formal administrative hearing before the Department of Human Resources. Further appeal can be made to the Superior Court.

### **3.6 Noise Regulations**

North Carolina has not adopted any statutes or regulations specifically pertaining to the regulation of noise. Local governments have enabling legislation which allows them to adopt noise ordinances for their jurisdiction and many have adopted such ordinances. Specific requirements concerning noise may be included in other regulations as part of established operating procedures or standards. Consideration of environmental noise may be addressed during public permit review. If environmental noise becomes a controversial public issue, the Division of Environmental Management may consider such impacts in drafting necessary permits.

### 3.7 Vector Control

#### INTRODUCTION

North Carolina has instituted a program to control the spread of mosquito-borne diseases by assuring that water impoundments do not provide a suitable habitat for mosquito breeding and reproduction. The permit applies to impoundments of water 100 acres or greater in size regardless of the depth. Smaller impoundments do not require a permit from the Department of Human Resources Vector Control Branch. The permit actually consists of two permits: a construction permit and an impoundment permit.

#### AUTHORIZING STATUTE(S)

##### I. FEDERAL

N/A

##### II. STATE

Chapter 143B, Article 3, Part 3, General Statutes of North Carolina, as amended.

#### TITLE OF REGULATION

Control of Impounded Water (North Carolina Administrative Code, Title 10, Subchapter 10C).

#### ADMINISTERING AGENCY

Director  
Division of Health Services  
Department of Human Resources  
P.O. Box 2091  
Raleigh, N.C. 27602  
919/733-6407

#### SUMMARY OF REGULATION

##### I. APPLICABILITY

A permit is required for all impoundments 100 acres or greater in size that are formed by excavation or construction of a basin or by the obstruction of stream flow that would not have formed from natural events, such as construction of dams by beavers.

##### II. REGULATORY REQUIREMENTS

The Division of Health Services must be notified if a new impoundment is to be built, an existing water body is to be expanded or raised, or water is to be reimounded in an area that has been empty for three or more months. The property owner is responsible for removing or otherwise destroying all objects (including brush, trees, trash, etc.) which would float or collect on the surface of the water before water may be impounded. All vegetative growth must be removed to a level one foot below the minimum water level. All vegetative growth must be removed from the impoundment banks in the areas from the low water line to ten feet above the high water line. All pool areas of the impoundment must be connected by a ditch or culvert that will permit drainage or access at low water. A mechanism must be provided

to allow controlled fluctuation of the water level during any season. A system must be provided that will allow removal of all impounded water. Written permission is needed to fill any reservoir during the months of April through September. The person responsible for maintaining the reservoir shall submit reports and shall comply with all corrective actions as directed by the Division.

### III. PERMIT REQUIREMENTS

#### Application:

The request for a permit must be submitted in triplicate on application forms issued by the agency.

#### Information Required:

The application submitted in triplicate must contain a description of the proposed project, its purpose, its exact location, an accurate plot of the area to be affected, showing the maximum and minimum water levels of the proposed impoundment, and other such information as detailed on the application form.

#### Review and Processing:

Within 30 days of the receipt of the written application an inspector from the Division or local health department will inspect the proposed impoundment site for adequacy. If the site is appropriate, a construction permit is issued and building may proceed. During construction, periodic inspections will be made by the Division (or authorized representatives from the local health department). When the impoundment is finished, the applicant will notify the Division that all construction requirements have been satisfied. The Division (or authorized representatives from the local health department) will inspect the site for compliance within 21 days. The Division will then issue an impounding permit if all rules have been met. The reservoir may then be filled to its intended water height (no filling from April to September without written authorization).

#### Fee:

There is no filing fee.

#### Time Requirements:

Application review and site inspection take 30 days. Upon completion of impoundment, the construction inspection and approval take 21 days.

#### Appeal Process:

When denial of a request for a construction permit is made, the applicant may appeal the program decision by exhausting all informal processes to review the department finding, requesting a department ruling based on hearings authorized by the N.C. Administrative Procedures Act, and then through Superior Court.

# RESOURCE EXTRACTION

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#### **4.0 RESOURCE EXTRACTION**

Resource extraction refers to the mining of coal and other minerals as well as the development of oil and gas resources. In North Carolina the regulation of mineral resource extraction and development is the responsibility of the Division of Land Resources of the Department of Natural Resources and Community Development.

Separate laws and regulations have been enacted to regulate oil and gas production and other mining activities. Permits are required for drilling oil and gas wells, surface mining operations, and geophysical exploration work. These laws, regulations, and permit programs are discussed in greater detail in the following chapters.

## 4.1 Energy Resources Development

### INTRODUCTION

The Department of Natural Resources and Community Development administers the Oil and Gas Conservation regulations. These rules govern the drilling, development, production, and abandonment of all oil and gas wells in North Carolina. The intent of the regulations includes conservation of oil and gas resources, protection of resource owners as well as resource developers, and protection of the general environment during the production and use of oil and gas resources.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

N/A

#### II. STATE

Chapter 113, Article 27, General Statutes of North Carolina, as amended.

### TITLE OF REGULATION

Oil and Gas Conservation Regulations (North Carolina Administrative Code, Title 15, Chapter 5, Subchapter D).

### ADMINISTERING AGENCY

Director  
Division of Land Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-4574

### SUMMARY OF REGULATION

#### I. APPLICABILITY

Any well drilled in North Carolina for the purpose of discovering and/or producing oil and gas must be in compliance with these regulations.

#### II. REGULATORY REQUIREMENTS

To assure that all aspects of the drilling operation are consistent with wise resource use, the regulations stipulate rules for the spacing of exploratory and production wells; the conduct of drilling, including protection of groundwater strata, the length of concrete casing in the well, the use of blowout preventers, well direction and deviation, and storage of cuttings; the filing of a completion report and well log; the procedure for plugging wells; and the method used for establishing production limits. The regulations do not identify the length of time a permit is in effect, but a permit is usually issued to cover the duration of the operation.

### III. PERMIT REQUIREMENTS

#### Application:

A permit application form is available from the Department and must be used when applying for a drilling permit for each well.

#### Information Required:

The following information must be submitted with the application:

1. total depth of the well;
2. casing program;
3. proposed boring disposal program (for waste water, drilling muds, etc.);
4. well name, number and location on a map with a scale of 1" = 4 miles or larger scale map;
5. proof of control of the lands to be drilled, either by proof of ownership or lease agreement; and
6. a statement of responsibility accepting liability for violation of these rules.

#### Review and Processing:

The Department reviews the information submitted on the application, and if properly detailed, the permit is issued.

#### Fee:

A fee of \$50 must accompany the permit application.

#### Time Requirement:

Although not specified, the processing time usually does not exceed 30 days.

#### Appeal Process:

The applicant may appeal the decision of the Secretary by requesting a formal administrative hearing within 30 days of the decision. Further appeal can be made to the Superior Court.

#### Additional Procedures:

In addition to the permit any entity wishing to conduct exploratory drilling must register with the Department and furnish a \$5000 bond to assure the well is plugged according to applicable regulations.

## 4.2 Mining: Metalliferous and Construction Materials

### INTRODUCTION

The Division of Land Resources of the Department of Natural Resources and Community Development is responsible for administering all permits for mining activities in North Carolina. The statutes and regulations covering mining operations were adopted to assure mining activities were conducted in a safe and efficient manner. In addition, the regulations address reclamation efforts necessary to provide protection of the state's resources and provide assurance of continued beneficial use of mined lands.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

N/A

#### II. STATE

The Mining Act of 1971, amended 1979, 1981 (Chapter 74, Article 7, General Statutes of North Carolina, as amended).

### TITLE OF REGULATION

Mining, Mineral Resources Regulation (North Carolina Administrative Code, Title 15, Chapter 5, subchapter B).

### ADMINISTERING AGENCY

Director  
Division of Land Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N. C. 27611  
919/733-4574

### SUMMARY OF REGULATION

#### I. APPLICABILITY

A mining permit is required for any land disturbing activity that affects one or more acres of land and is conducted to accomplish one or more of the following: breaking surface soil to extract or remove minerals, ores, or other solid matter; any activity or process to remove or to extract minerals, ores, soils, and other solid matter from its original location; or the preparation, washing, cleaning or other treatment of such materials so as to make them suitable for commercial, industrial, or construction use.

#### II. REGULATORY REQUIREMENTS

Mine operators must comply with the operating procedures and reclamation plans as described in the permit application. In addition, the operator must file a reclamation report by February 1 of each year and within 30 days of completion of mining an area under permit. The report must identify the mine operator and location, state acreage of disturbed land, describe reclamation efforts, and estimate acreage to be disturbed in

subsequent 12-month period along with maps as requested. The surety bond will be released upon satisfactory completion of the reclamation plan as approved by the Department.

### III. PERMIT REQUIREMENTS

#### Application:

A printed permit application and attached question sheets must be completed to obtain a mining permit.

#### Information Required:

The completed application shall contain the following types of information:

1. a description of the mining operations including:
  - a. materials to be mined;
  - b. method of mining,
  - c. description of effects on the environment;
  - d. sedimentation prevention measures; and
  - e. proposed screening measures
2. a land reclamation plan including:
  - a. a description of impacted resources; and
  - b. proposed methods to prevent or reduce potential harm to these resources.

#### Review and Processing:

Upon submission of a permit application the regional office makes a site inspection to verify application information. Once the application is approved the Department will determine the performance bond which ranges from \$2,500-25,000, based on acreage of the mine site. The operator has 60 days to obtain a bond or other suitable security after which the permit will be issued. Permits may be issued for up to ten years. Application for renewal of mining permit may be submitted at any time during the two years prior to its expiration date.

#### Fee:

No fee is required for permit application.

#### Time Requirement:

The permit process normally takes 30 days. However, if a reply is not received within 60 days of submittal of a completed application, the permit is statutorily approved.

#### Appeal Process:

The mine operator may appeal a decision to the state Mining Commission within 60 days of notice by the Department that a permit is not approved. Further appeal is through Superior Court.

### 4.3 Geophysical Exploration Permit

#### INTRODUCTION

Geophysical exploration work, consisting of surveys and investigations for oil, gas, and other minerals, includes seismic methods, which may or may not involve the use of explosives to determine the presence and location of such minerals. These regulations apply to exploration activities within the tidewater area of the state extending to the three mile state marine boundary.

#### AUTHORIZING STATUTE(S)

I. FEDERAL

N/A

II. STATE

Chapter 113, Article 27, General Statutes of North Carolina, as amended.

#### TITLE OF REGULATION

Geophysical Exploration Regulations (North Carolina Administrative Code, Title 15, Chapter 5, Subchapter C).

#### ADMINISTERING AGENCY

Director  
Division of Land Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-4574

#### SUMMARY OF REGULATION

I. APPLICABILITY

A permit is required for all geophysical exploration within the tidewater area of the state. No exploration may be initiated without a permit.

II. REGULATORY REQUIREMENTS

Each operator will post a \$5,000 surety bond for one crew or a \$25,000 bond for more than one crew. Each crew will be accompanied by a seismic agent who will file a daily report, signed by the crew chief. Size, time, location, types of charges and charge placement regulations are presented in detail. In addition, responsibilities of the crew chief and seismic agent are listed in the regulations.

III. PERMIT REQUIREMENTS

Application:

There is no specified permit form, although one may be promulgated at the Department's discretion.

Information Required:

Four copies of the application request are to be filed with the Department.

Each copy must contain a detailed map of the area to be explored noting pertinent landmarks. If the area to be explored is owned by another entity, written permission from the owner must accompany the permit application.

Review and Processing:

An application must be filed at least ten days before issuance of a permit. Newly instituted review procedures with the Wildlife Resources Commission, the Division of Marine Resources and the Office of Coastal Management may extend the issuance time to 30 days. After a review the permit will be issued by the Director of the Division of Land Resources.

Fee:

None. However, fees are charged for a seismic agent who must accompany the exploration crew throughout their exploratory activities. A monthly fee of \$480 is charged in addition to a daily expense fee of \$10 per day. For any portion of a month less than 15 days, one half of the monthly charge is assessed.

Time Requirement:

Thirty days should be allowed for review of application and issuance of permit. The permit is granted for up to six months and two 90-day extensions may be requested. Further work requires a new permit.

Appeal Process:

Appeal can be made by requesting a formal administrative hearing. Further appeal can be made to Superior Court.

Enforcement and Penalties:

Violations of the regulations may result in a misdemeanor charge carrying a \$100-\$1000 per day penalty and possible exclusion from further exploration activities.

# LAND USE REGULATION

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## 5.0 LAND USE REGULATION

Land use regulation in North Carolina is an authority delegated to local governments by enabling legislation. Locally adopted tools for land use regulation include zoning, building codes, land use planning, and subdivision regulations. However, planning and management of land use are elements of most state agencies' responsibilities in regulating natural resource conservation and development. Specifically, North Carolina has developed regulations which affect

- Oil refinery siting (5.1)
- Construction in state waters (5.2, 5.3, 5.4)
- Floodplain management (5.5, 5.6)
- Coastal management/wetlands (5.7, 5.8)

## 5.1 Oil Refinery Permit

### INTRODUCTION

The Department of Natural Resources and Community Development has the authority to regulate oil refining facilities in North Carolina. The purpose of the permit process is to establish procedures and standards under which permits for the construction and operation of oil refining facilities will be issued or denied. The permit decision will be based on a full and fair discussion and assessment of effects which the refinery will or may have on wildlife; freshwater, estuarine, or marine fisheries; air quality; water quality; and publicly owned parks, forests, and recreation areas.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
N.C. General Statute 143-215, Article 21A, Parts 1 through 4

### TITLE OF REGULATION

15 N.C. Administrative Code 1 F - Oil Refinery Facilities Permit.

### ADMINISTERING AGENCY

Assistant Secretary for Natural Resources  
Department of Natural Resources and Community Development  
Post Office Box 27687  
Raleigh, N.C. 27611  
919/733-4006

### SUMMARY OF REGULATION

#### I. APPLICABILITY

Any oil refining facility or oil terminal facility must apply for a permit before construction, operation, or substantial modification of such a facility may begin. Facilities include any structure used for transferring, transporting, storing, processing or refining oil, including pipelines.

#### II. REGULATORY REQUIREMENTS

These regulations do not address regulatory procedures that affect the operation of the proposed facility.

#### III. PERMIT REQUIREMENTS

##### Application:

No official permit application form is available.

##### Information Required:

One application and two sets of drawings, maps, plans and specifications

must be filed with the Assistant Secretary for Natural Resources. The application must address 16 specified elements including applicant's interest and experience in oil refining operations, applicant's financial condition, full description of facility's operation plans and procedures for minimizing adverse impacts of spills and discharges and an assessment of construction and operation impacts on wildlife, fisheries, air quality, water quality, and publicly owned parks, forests or recreation areas. Additionally, two sets each of the most current drawings, maps, plans, and specifications concerning facility construction and operation, as well as the transfer of oil, must be submitted.

Review and Processing:

The applicant will be notified within 30 days whether the application is complete or incomplete. If incomplete, additional information will be requested. Within 45 days of receiving a completed application, a public notice is provided including a date for public hearing. The hearing must be held between 45 and 60 days after the date of the public notice and the record remains open 30 days after the close of the hearing. The permit decision must be made within 45 days from the close of the record.

The permit will not be effective until the necessary water and air quality permits are obtained. An annual report of specified aspects is required on February 1 of each year.

Fees:

None

Time Requirements:

The permit process may take up to 210 days but is normally completed within 160 days of submitting a complete application.

Appeal Process:

Any person aggrieved by the permit decision may seek a final decision from the Secretary of the Department.

## 5.2 State Lakes Construction Permit

### INTRODUCTION

The State Lakes Construction Permit is designed to protect state property covered by state-owned lakes throughout North Carolina. The use of state lands is controlled by managing construction activities that take place on any state-owned lake bottom up to the mean high water mark.

### AUTHORIZING STATUTUE(S)

I. FEDERAL  
N/A

II. STATE  
Chapter 113, Article 2 Subchapter 35, General Statutes of North Carolina, as amended.

### TITLE OF REGULATION

State Lakes Regulations (North Carolina Administrative Code , Title 15, Subchapter 12C).

### ADMINISTERING AGENCY

Director  
Division of Parks and Recreation  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-4181

### SUMMARY OF REGULATION

#### I. APPLICABILITY

These permit regulations apply to all state-owned lakes: White Lake, Singletary Lake, Bay Tree Lake, Jones Lake, Salters Lake, Lake Waccamaw, and Lake Phelps. Any entity owning land adjacent to these lakes and wishing to construct, maintain, or modify a structure upon the floor of these lakes must obtain a permit before starting construction.

#### II. REGULATORY REQUIREMENTS

These regulations designate the types of structures permissible on state owned lakes and describe permissible structure dimensions for piers, boat ramps, buoys, patios, platforms, pavilions, boat stalls, and other structures. Permits are available only to landowners with property adjoining the lake, those owning exclusive right to the use of land adjoining the lake, and local governments at a public beach or at the end of a dedicated street. New construction, modifications, and permit transfers require permits. In application, the regulations address such items as water levels, hunting, refuse disposal, mooring buoys, firearms, explosives, and aviation.

### III. PERMIT REQUIREMENTS

#### Application:

An official application form is required.

#### Information Required:

Each application must contain:

1. a written description of the structure showing the relationship of the structure to the alternative property;
2. a statement identifying the waterfront property giving rise to the right to apply for the permit;
3. a statement of the applicants property rights;
4. a statement of knowledge of all applicable regulations; and
5. the owners name and address.

#### Review and Processing:

Following the submission of three copies of a complete application, an on-site inspection is made by a representative of the Division of Parks and Recreation. and specific structural dimensions are determined. The inspector makes a recommendation to the Division Director, who signs the appropriate permit, forwarded to the property owner.

#### Time Requirements:

Processing time usually takes from 15 to 20 days following submittal of a complete application.

#### Fees:

\$20 for a construction, modification, or renewal permit; \$10 for permit transfer; and \$50 for a non-conforming use permit. In addition to permit fees, annual fees are charged based upon the type (private, commercial, public) and size of the structure.

#### Appeal Process:

The aggrieved party may appeal a decision within 30 days of receipt of notice by the Division. The Division will hear the complaint within 60 days of receipt of notice of a call for hearing and a decision will be reached. Further appeal can be filed with the Secretary of the Department within ten days of the Division decision. The Secretary, upon considering all evidence, will issue a final department ruling. Further appeal can be made to Superior Court.

## 5.3 Easement to Fill

### INTRODUCTION

An Easement to Fill is required from the Department of Administration in all cases where the applicant wishes to raise lands above the normal high water marks of navigable waters by filling. This easement is a real estate action allowing use of state lands covered by navigable waters. A state dredge and fill permit and a federal permit are also required to proceed with the filling activity and may be obtained from the Department of Natural Resources and Community Development and the U.S. Army Corps of Engineers, respectively. An easement to fill is not required if the land owner is restoring his property to the original grade which existed prior to loss through natural erosion during his ownership. Permission to fill is required from the department.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
None.

II. STATE  
Chapter 146, Article 2, General Statutes of North Carolina, as amended.

### TITLE OF REGULATION

North Carolina Administrative Code, Title 1, Chapter 6, Subchapter B, Section .0500 through .0512.

### ADMINISTERING AGENCY

Department of Administration  
State Property Office  
116 West Jones Street  
Raleigh, NC 27611  
919/733-4346

### SUMMARY OF REGULATION

#### I. APPLICABILITY

An easement to fill is required in all instances where land will be raised above the high water mark in navigable waters by filling.

#### II. REGULATORY REQUIREMENTS

The regulatory requirements (Sections .0504 and .0506) require that all adjacent riparian owners be notified and that they have 30 days to object to the proposed filling action. Also, the applicant can only fill in state waters that are immediately adjacent to his property. If the property owner is reclaiming land lost due to natural causes during his ownership and wishes to receive a quitclaim deed for the filled land, he will not have to pay compensation. Proof of the loss and the nature of the loss must be submitted to the State Property Office. Local governments may receive an easement to fill if they are riparian owners and use the filled land to serve the public. Compensation will be determined by calculating

the value of the land less the cost to bulkhead and fill the subject land.

### III. EASEMENT REQUIREMENTS

#### Application:

A written request must be filed including a plot indicating the location of the filling operation.

#### Information Required:

When a quitclaim deed is required, a metes and bounds description of the filled area and a plat or a drawing must accompany the request.

#### Review and Processing:

Following submission of an application and consideration of all objections filed by adjacent riparian owners within the 30-day review period, the Division of State Property will determine whether the proposed action will interfere with public use of navigable water or injure any riparian owner. If no detrimental actions are identified, the Department will issue an easement upon approval of the Council of State and shall determine consideration for each easement.

#### Time Requirement:

No specified time is given for processing the easement application, but normal requests are usually processed in 45 to 60 days. Once issued, the easement shall remain in effect until December 31 of the next year subsequent to its execution.

#### Fees:

A certified check for \$100 must accompany the easement application. Other costs deemed appropriate may be charged by the Department.

#### Appeal Process:

Appeals may be made to the Secretary of the Department of Administration upon submission of a written appeal. Further appeals would be to the Superior Court.

## 5.4 Easements Over Water

### INTRODUCTION

Easements are required for projects over state-owned lakes or navigable waters. An easement is required for any proposed structure constructed by adjoining landowners, excluding piers or docks, etc., which provide simple riparian access. Easements will not be granted for structures which can be built over land. Easements are also required for such projects as pipelines and overhead or underground cables for the purpose of: cooperating with the federal government, utilizing the state's natural resources, or serving the public interest.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
None.

II. STATE  
Chapter 146, Article 2, General Statutes of North Carolina, as amended.

### TITLE OF REGULATION

North Carolina Administrative Code, Title 1, Subchapter 6B, Section 0600 through .0610

### ADMINISTRATIVE AGENCY

Department of Administration  
State Property Office  
116 West Jones Street  
Raleigh, NC 27611  
919/733-4346

### SUMMARY OF REGULATION

#### I. APPLICABILITY

An easement is required for all activities, other than simple riparian access, that extend over navigable waters or lands covered by the waters of state lakes or navigable waters.

#### II. REGULATORY REQUIREMENTS

Easements will not be granted for buildings which can be located over land.

#### III. EASEMENT REQUIREMENTS

##### Application:

A written application must be filed with the State Property Office of the Department of Administration.

##### Information Required:

A plat or drawing of the proposed project must be submitted with the application.

Review and Processing:

The State Property Office will investigate the request and approve or deny the request.

Time Requirements:

No specific time is indicated but requests are usually processed in 45 to 60 days.

Fees:

A certified check for \$100 must accompany the easement request.

Appeal Process:

Appeals may be made to the Secretary of the Department of Administration. Further appeals may be made to the Superior Court.

## 5.5 Flood Plain Management

North Carolina has one statute with no accompanying regulations directly addressing flood plain management, N.C. General Statute 143-34-.10 et seq. - Floodway Regulation. The statute addresses only those activities which could impede water flow within the floodway. Since no regulations have been developed, this statute is not actively enforced.

The state does include consideration of Areas of Environmental Concern (AEC) high hazard flood areas under the Coastal Management Program (Section 5.7). The area encompassed by the regulatory program corresponds to the area subject to high velocity waters in a storm having a one percent chance of being equaled or exceeded in any given year, identified as Zone VI-30 on the flood insurance rate map of the Federal Insurance Administration, U.S. Department of Housing and Development. All development within this designated area must receive a permit from the Coastal Resources Commission or authorized local government before construction may begin. Permit issuance is based on compliance with established construction standards that apply only within the 20-county coastal management area.

Additional flood plain management measures have been implemented throughout the state based on programs administered by the Federal Emergency Management Agency. Also, enabling legislation allows local governments to adopt floodplain ordinances. These programs establish incentives in the form of subsidized flood insurance to homeowners in communities which adopt recommended guidelines pertaining to floodplain development. Generally, development and construction standards are imposed based upon detailed floodplain maps which indicate the extent and probability of flooding within the participating community. The program is optional and may only be implemented at the community's request.

## 5.6 Dam Safety

### INTRODUCTION

The Dam Safety Law was enacted to protect the health, safety, and welfare of the citizens of North Carolina by preventing the loss of reservoir storage, reducing damage to property and injuries to persons, and reducing the failure of dams by authorizing the inspection and certification of certain dams whenever they require construction, modification, repair, or removal. In addition, it is the intent of this legislation to ensure maintenance of minimum stream flows (quantity and quality) below regulated dams.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
Dam Safety Law of 1967 (State Chapter 143, Article 21, Part 3, General Statutes of North Carolina, as amended).

### TITLE OF REGULATION

Dam Safety Regulations (North Carolina Administrative Code, Title 15, Chapter 2, Subchapter K).

### ADMINISTERING AGENCY

Director  
Division of Land Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-4574

See Chapter 7.2 for Regional Office listings.

### SUMMARY OF REGULATION

#### I. APPLICABILITY

All dams (excluding those under the jurisdiction of the U.S. Army Corps of Engineers, Tennessee Valley Authority, or other federally funded agency or those dams under single private ownership posing no threat to other property owners) which have a height above 15 feet and where impoundment capacity exceeds 10 acre-feet.

#### II. REGULATORY REQUIREMENTS

None.

#### III. PERMIT REQUIREMENTS

##### Application:

Any person wishing to construct, repair, alter or remove a dam must

submit an application to determine whether the action requires a permit.

Information Required:

Location of stream and name of stream, and height, purpose and capacity of impoundment must be submitted ten days prior to construction. If action does not need a permit, notice to proceed with construction will be given within ten days.

If a permit is necessary, notice will be given within ten days that four copies of a full and complete application must be submitted including a detailed description of the proposed dam. Data necessary for issuance of a "Certificate of Approval" allowing construction must include:

1. spillway calculations;
2. construction schedule;
3. a soil report on dam location and borrow materials;
4. an analysis to indicate dam stability under all conditions of operation;
5. wave and flood occurrence calculations;
6. seepage calculations;
7. proposed filling schedule;
8. erosion control measures;
9. maintenance plan;
10. calculations of the design life of the dam and reservoir;
11. provisions for maintaining minimum stream flows and plans and specifications prepared by a professional engineer.

In addition, a report detailing the properties endangered by possible dam failure, the area to be covered by the reservoir, site access points, and other watershed data affecting dams design must be submitted for consideration.

Review and Processing:

Upon receipt of a complete application the request will be circulated for review to state agencies including the Department of Transportation, Human Resources, and Natural Resources and Community Development. Upon receiving comments the Director will notify the applicant in writing of project approval or disapproval. Construction may then proceed if authorized but must be started within one year of certificate issuance.

The engineer responsible for the project will certify that construction is complete and consistent with the plans and that the dam is safe. The Director of the Division of Land Resources shall then grant final approval, thereby allowing the reservoir to be filled. Thus, although one permit is necessary, two approvals are required; the first to construct, the second to impound.

Fee:

None

Time Requirements:

Following the submission of a complete application, the Director has up to 60 days to complete his review and issue a written decision to the applicant. This process normally takes between 30 and 45 days.

Appeal Process:

If the applicant disagrees with the application decision, he may request a hearing within ten days of receipt of the notice of action from the

Director. A hearing will be held within 60 days of the hearing request by a hearing officer appointed by the Environmental Management Commission. The hearing officer will present the case findings to the Commission at the next Commission meeting and a decision will be issued. Further appeal will be to the Superior Court.

## 5.7 Coastal Zone Management

### INTRODUCTION

The Office of Coastal Management in the Department of Natural Resources and Community Development is responsible for administering this permit in conjunction with the Dredge and Fill permit. An application submitted to this office will also initiate processing for U. S. Army Corps of Engineers Section 10 and 404 permits, a state Easement to Fill, and a state Section 402 Water Quality Certification. The OCM rules and regulations apply to a 20-county area encompassing all counties affected by tidal influences from the Atlantic Ocean. Specific resource areas within these counties have been identified as "Areas of Environmental Concern" (AEC's).

All development projects within an AEC require a permit from the Office of Coastal Management or a Coastal Area Management Act (CAMA) minor permit from the the local government depending upon the magnitude of the project. The intent of this program is to integrate necessary land uses into the coastal natural resources with a minimum of environmental disruption through a coordinated approach to coastal resource management.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

Coastal Zone Management Act of 1972, (P.L. 92-583).

#### II. STATE

N.C. General Statute Chapter 113 A, Article 7, Subsection 118 Coastal Area Management Act of 1974.

### TITLE OF REGULATION

N.C. Administrative Code 7J .0100 through .0200 - Coastal Management.

### ADMINISTERING AGENCY

Coastal Consultant, Regional Field Office or  
Office of Coastal Management  
Post Office Box 27687  
Raleigh, N.C. 27611  
919/733-2293

### SUMMARY OF REGULATION

#### I. APPLICABILITY

All major development located within designated areas of environmental concern in the 20 coastal counties must have a permit.

Major development is defined as any development which:

1. requires permission, licensing, approval, certification, or authorization in any form from the Environmental Management Commission, Mining Control Board, or the Departments of Human Resources, Natural Resources and Community Development, or Administration;

2. occupies a land or water area in excess of 20 acres;
3. contemplates drilling for or excavating natural resources on land or under water; or
4. occupies on a single parcel, a structure(s) in excess of a ground area of 60,000 square feet.

General and specific use standards concerning development types in each respective area of environmental concern are specific in the regulations.

The coastal counties affected are:

Bertie	Gates
Beaufort	Hertford
Brunswick	Hyde
Camden	New Hanover
Carteret	Onslow
Chowan	Pamlico
Craven	Pasquotank
Currituck	Pender
Dare	Perquimans
	Tyrrell
	Washington

## II. REGULATORY REQUIREMENTS

The Coastal Management Program coordinates and controls development in Areas of Environmental Concern (AEC) consisting of estuarine waters, coastal waters, coastal wetlands, public trust areas, estuarine shorelines, beaches, frontal dunes, inlet lands, public well fields, small surface water supply watersheds, and fragile natural and cultural resource areas. The regulations define the significance of the resource, the management objective for the resource, how to identify the resource, and specific use standards for new construction. Exemptions are also listed for each AEC.

Local governments are required to establish land use plans for all areas within the coastal zone. The plan must be consistent with state guidelines and policies. Development must be consistent with the local land use plan.

## III. PERMIT REQUIREMENTS

### Application:

Official application forms are to be used and may be obtained from the Office of Coastal Management, the regional offices, or the local governments eligible to issue CAMA permits.

### Information Required:

Application forms and \$10.00 fee for CAMA major development permits should be submitted well in advance of the planned construction date to the Office of Coastal Management in Raleigh or regional field offices. The application must include:

1. location and description of the project;
2. land type, disposal area, and construction equipment;
3. land classification in CAMA local land use plan; current and future use of project area; and
4. a location map and work plat drawn to specified standards and showing plan view and cross sectional view.

The applicant must also furnish a copy of the deed or other instrument by which title to the property is claimed or permission by the owner is given.

Review and Processing:

Upon receipt of three complete applications, a field officer from the Office will make an on-site investigation and write up a field report evaluating the proposal in light of coastal regulations. The application and field report are circulated to appropriate state agencies for review at the same time as public notice is given in the local newspaper in the project area. After all reviews have been completed and a recommendation prepared by the Office, the Coastal Resources Commission will consider the proposal and approve, deny, or offer conditional approval to the project. If a project is approved, a permit is issued that will be valid for the duration of the proposed project but will not exceed four years.

Fee:

A fee of \$10 must accompany each application.

Time Requirements:

The application review and decision process has a statutory 90-day limit, which can be extended by 90 days if the proposed project is especially controversial or complex. The initial 90-day period starts upon receipt of a complete application. If no action is taken within 90 days, the application is approved. Normally, processing and approval are completed in 60 days.

Appeal Process:

The Commission or its designated agent will hear all appeals that are requested on its action, including petitions for variance, appeals from Department decisions, and appeals from minor development permit decisions. The applicant must notify the Commission that a hearing is desired within 20 days of notification of an application decision. A hearing will be held after a 30-day public notice period. The record will remain open for 30 days following the hearing, after which the Commission will present a decision. The applicant may appeal further to the Superior Court.

## 5.8 Dredge and Fill Permit

### INTRODUCTION

The Dredge and Fill Permit process was established to prevent the unwarranted disturbance of state owned water bottoms and coastal marshes through either excavation or filling. This process protects the wetlands and their associated wildlife and plant species. Also, the waters of the state are protected from pollution by stagnation and sedimentation. The Coastal Resources Commission has authority for administering this permit.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

N/A

#### II. STATE

N.C. General Statute Chapter 113-229, Article 7 Coastal Area Management Act.

### TITLE OF REGULATION

15 N.C. Administrative Code 7J .0800 through .1024, Dredge and Fill Permit Regulations.

### ADMINISTERING AGENCY

Office of Coastal Management  
Post Office Box 27687  
Raleigh, N.C. 27611  
919/733-2293

### SUMMARY OF REGULATION

#### I. APPLICABILITY

Any project involving dredging and filling activities in estuarine waters, tidelands, marshlands, or state-owned lakes requires a permit.

#### II. REGULATORY REQUIREMENTS

Specific regulatory rules are not listed but permit conditions governing implementation of the proposed work may be imposed at the request of the reviewing state agencies in order to protect the public interest. Criteria for project planning and evaluation are included in the rules and should be considered when designing a project.

#### III. PERMIT REQUIREMENTS

##### Application:

An official application form is available from the Office of Coastal Management in Raleigh or any of the four field offices located in the coastal area. The permit application automatically includes a request for the Coastal Area Management Act (CAMA) Major Development Permit, Corps of Engineers' Section 10 and 404 Permits, Easement to fill on state-owned

lands, and 401 Water Quality Certification if they are required for project initiation. Any project needing a state dredge and fill permit and Corps 404 permit may qualify for a Corps General 404 or Section 10 permit. This will be determined automatically and the General permit will be issued if state requirements are met and if no objections are submitted by federal agencies.

Information Required:

In addition to the official application form, a work plat detailing the proposed construction (top views and elevations) and a map describing the location of the project to enable site inspection should be filed with the office. Detailed submittal instructions are listed in the regulations.

Review and Processing:

Two copies of the completed application are submitted to the office, and the applicant must provide each adjacent riparian landowner a copy of the complete application. These landowners have 30 days to file comments with the office. An on-site investigation will be completed and a report will be made on the project. The field report and adjacent landowner comments are then circulated to interested state agencies for review. When the state review has been completed, the department will issue or deny the permit and notify the applicant by mail.

The regulations also provide provisions for an expedited procedure for an applicant to request and receive a special emergency dredge and fill permit where life and structural property is in imminent danger as a result of rapid, recent erosion or sudden failure of a man-made structure. The applicant contacts a permit officer, draws up a description of the emergency project, attempts to notify adjacent riparian landowners, certifies this attempt, and files the review application with this permit officer. The Department will review and recommend action within two days of completion of the review. The applicant will be notified by phone or in person.

Fee:

None. (However, the CAMA permit is almost always required for the same work. A \$10 fee is required for the CAMA permit.)

Time Requirements:

Following submission of a complete application, the Department has 90 days to respond to the request. If no decisions are forthcoming, the permit is granted by statute. The process normally is completed in 55 days.

Appeal Process:

The applicant may appeal the decision to the Department within 20 days of notice of the decision. Further appeal is to the Superior Court.

# ECOLOGICAL/SOCIAL PRESERVATION

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## **6.0 ECOLOGICAL/SOCIAL PRESERVATION**

Unique ecological and cultural features enhance the quality of life and are often the focus of special legislation. The federal government and many states have enacted laws specifically to protect special features and resources such as threatened and endangered species, wetlands, and archeological and historical resources. North Carolina has also recognized the importance of these special resources and has enacted several laws specifically to preserve these resources.

Archeological and historical resources receive special attention at the state level through the implementation of federal programs. Soil erosion and sedimentation control recognize the importance of erosion control in preserving terrestrial habitats and preventing degradation of aquatic habitats by reducing sediment transport to receiving water resources. Wildlife resources, particularly threatened and endangered species, are protected by various mechanisms that rely on federal statutes and state implementation.

## 6.1 Rare and Endangered Species

### INTRODUCTION

The protection of rare and threatened wildlife species has been undertaken to assure that governmental funds are not spent in a manner that would jeopardize the continued existence of particular animal species. In addition, these regulations restrict the taking of listed endangered species to those entities that are carrying out scientific research to perpetuate or restore the species. The regulations affect private and public projects but require more stringent compliance procedures for public expenditures.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

Endangered Species Act of 1973, (P.L. 93-205).

#### II. STATE

N. C. General Statute 113 through 134.

### TITLE OF REGULATION

N. C. Administrative Code, Chapter 10, Subchapter I - Endangered and Threatened Species

### ADMINISTERING AGENCY

Director, Wildlife Resources Commission  
P.O. Box 27687  
Raleigh, N.C.  
919/733-3391

### SUMMARY OF REGULATION

#### I. APPLICABILITY:

A listing of 17 endangered and four threatened wildlife species has been compiled for North Carolina. If the species or its habitat is to be affected by any development action, the Wildlife Resources Commission should be consulted. All actions utilizing public funds or requiring governmental permits are required to address impacts on these species prior to project implementation, and the project must be so modified as to preclude adverse impact on the species or its habitat. Actions involving private funds must be so conducted as to avoid harassment or harming of listed species.

#### II. REGULATORY REQUIREMENTS

Under the federal regulations, if federal funds are involved, the applicant must contact the U. S. Fish and Wildlife Service and determine how the species can be protected and what actions are necessary to enhance its survivability. If private funds are to be used, then the developer has the responsibility of refraining from any action that could be construed as harassing or harming listed species. Harassment could include adversely affecting critical habitat.

State regulations require permits to take listed species and require reports to be filed in accordance with federal law.

### III. PROGRAM REQUIREMENTS

The North Carolina Wildlife Resources Commission is responsible for monitoring the effects of proposed construction projects on endangered and threatened species. Sponsors of projects which are subject to A-95 and State Environmental Policy Act review must determine whether the project site is occupied by listed species and indicate how the project would affect said species. The Commission reviews these assessments for accuracy and propriety of indicated mitigation. The Commission forwards its evaluation of the sponsor's assessment to the permitting agency, which may decide to deny the permit unless the project is modified to accommodate affected species properly.

The following species of resident wildlife are designated as endangered species:

1. American alligator (Alligator mississippiensis)
2. American peregrin falcon (Falco peregrinus anatum)
3. Arctic peregrin falcon (Falco peregrinus tundrius)
4. Bachman's warbler (Verimivora bachmanii)
5. Bald eagle (Haliaeetus leucocephalus)
6. Brown pelican (Pelecanus occidentalis)
7. Eastern cougar (Felis concolor cougar)
8. Gray bat (Myotis grisescens)
9. Indiana bat (Myotis sodalis)
10. Ivory-billed woodpecker (Campephilus principalis)
11. Kirtland's warbler (Dendroica kirtlandi)
12. Leatherback turtle (Dermodochelys coriacea)
13. Manatee (Trichechus manatus), when found in inland fishing waters
14. Red-cockaded woodpecker (Picoides borealis)
15. Shortnose sturgeon (Acipenser brevirostrum), when found in inland fishing waters
16. Atlantic ridley turtle (Lepidochelys kempii)
17. Hawksbill turtle (Eretmodochelys imbricata)

The following species of resident wildlife are designated as threatened species:

1. Spotfin chub (Hybopsis monacha)
2. Noonday land snail (Mesodon clarki nantahala)
3. Green turtle (Chelonia mydas)
4. Loggerhead turtle (Caretta caretta)

#### Fees:

None

#### Appeal Process:

Any appeals for a permit denial should be made to the permitting or funding agency processing the application.

## 6.2 Sedimentation and Erosion Control

### INTRODUCTION

The sedimentation control plan required in North Carolina has been implemented to reduce the effects of sedimentation in the state's waters and to control accelerated erosion resulting from land disturbing activities. The emphasis of the program is on prevention of erosion-induced sedimentation rather than on remedying sedimentation and erosion once they have occurred. Local governments may be delegated the authority to administer this program upon submission and Commission approval of a procedure to review sedimentation control plans consistent with the state regulations.

### AUTHORIZING STATUTE(S)

#### I. FEDERAL

N/A

#### II. STATE

Sedimentation Control Law of 1973 (Chapter 113A, Article 4, General Statutes of North Carolina, as amended).

### TITLE OF REGULATION

Sedimentation Control Regulations (North Carolina Administrative Code, Title 15, Subchapters 4A through 4D)

### ADMINISTERING AGENCY

Director  
Division of Land Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-4574

Local government with approved ordinance.

### SUMMARY OF REGULATION

#### I. APPLICABILITY

A sedimentation control plan is required for any land-disturbing activity when the proposed activity is to be undertaken on a tract comprising one or more acres, if more than one contiguous acre is to be uncovered.

#### II. REGULATORY REQUIREMENTS

The regulations require that persons undertaking land-disturbing activities submit sedimentation plans prior to initiating land clearing operations. All activities resulting in one or more acres of disturbed land fall within the regulations except agricultural and silvicultural operations and mining activities regulated under the North Carolina Mining Act of 1971. Each plan must present measures to control the peak runoff from a 10-year frequency storm. Specific sections of the regulations

address minimum standards for construction in proximity to water bodies, protection of stream banks and channels, mandatory standards for land-disturbing activities, and design and performance standards. Once the plan has been submitted, it is the responsibility of the person disturbing the land to meet the requirements of the plan. Upon project completion, the landowner is responsible for maintenance.

On-site inspections of sedimentation control measures will be made by the state field engineers. Violations will be cited and corrective action will be taken to assure compliance with state regulations.

### III. PERMIT REQUIREMENTS

#### Application:

No specific application form is necessary.

#### Information Required:

One set of plans must be submitted containing architectural and engineering drawings, maps, calculations, assumptions and narrative descriptions to describe the necessary erosion reduction and sedimentation control structures/devices to contain runoff from a 10-year storm. Detailed guidelines may be more restrictive than the State program mandates.

#### Review and Processing:

The sedimentation control plan is submitted to the field office land quality engineer or approved local government at least 30 days prior to project initiation. No written approval from the state is required on privately funded projects, but all governmentally funded (federal, state, local) projects require state approval before construction begins. Plans deemed inadequate may be modified or appealed to the governing body. Normal review time is 15 days; if no reply is received within 30 days of submission, the plan is statutorially approved.

#### Fees:

None at state offices. Local authorities' charges may range from \$25 to \$150 per acre.

#### Appeal Process:

A public hearing may be held by the Commission if an appeal is submitted within 15 days of notification to the applicant. Judicial review of the Commission's final decision may follow in Superior Court.

### **6.3 Archeological and Historical Resources**

Archeological and historic resources are included in the North Carolina Environmental Policy Act, although specific permits are not issued. Permits are obtained from the Underwater Archeology Branch of the Department of Cultural Resources to dive on submerged sites and retrieve artifacts. In addition, to conduct archeological investigations on state owned property, a permit is issued from the Department of Administration in consultation with the Department of Cultural Resources.

The State Historic Preservation Office comments and advises various state agencies on proposed undertakings under the authority of the North Carolina Environmental Policy Act and Executive Order XVI. In addition, this office is responsible for the review of major Coastal Area Management Act permits and all state and federal land disturbing permits. Review is done by using existing data and studying the environmental setting of the project. Surveys are recommended for projects in which the proposed location is considered an archeologically sensitive area. If a property is determined to be historically or archeologically significant, the effect of the project on the property is determined and possible mitigative alternatives are recommended.

## 6.4 Forest Protection

### INTRODUCTION

Regulations administered by the Division of Forest Resources establish a permit program to protect North Carolina's forestry resources from uncontrolled fires. Controlled burning is often necessary for prudent forestry management and ground clearance. It is the responsibility of the Division of Forestry Resources to manage these actions so that uncontrolled fires are kept to a minimum. To achieve this goal, specific site and time related permits are required, contingent upon areawide burning bans issued by the State Forester.

### AUTHORIZING STATUTE(S)

I. FEDERAL  
N/A

II. STATE  
Chapter 14, Article 15, General Statutes of North Carolina, as amended.

### TITLE OF REGULATION

North Carolina Administrative Code, Title 14, Chapter 9, Subchapter C.

### ADMINISTERING AGENCY

Director  
Division of Forest Resources  
Department of Natural Resources and Community Development  
P. O. Box 27687  
Raleigh, N.C. 27611  
919/733-2162

### SUMMARY OF REGULATIONS

#### I. APPLICABILITY

Regulations pertaining to controlled burning in woodlands or within 500 feet of woodlands are applicable throughout the state. A general burning permit is required if a fire is to be started between the hours of 12:00 midnight and 4:00 p.m.

In Dare, Hyde, Tyrrell, and Washington counties a ground clearance burning permit is required for burning at any time. This special permit is to protect the extensive peat resources located in these four counties from consumption by subterranean fires.

#### II. REGULATORY REQUIREMENTS

Mandated requirements for burning within 500 feet of lands protected by the Department of Natural Resources and Community Development include:

1. the possession of a burning permit;
2. the possession of a ground clearing burning permit for any burning in Dare, Hyde, Tyrrell and Washington Counties;
3. knowledge of the State Forester's decision to allow burning on a

- given day,;
4. an inspection by a North Carolina Forestry agent prior to burning in the counties listed above; and
  5. a posted watchman for fires which may endanger property of others. Failure to comply with these regulations may result in fines up to \$50 and a jail sentence of 30 days.

### III. PERMIT REQUIREMENT

#### Application:

A burning permit may be applied for in person at the Division of Forestry Resources permit agencies located in each county.

#### Information Required:

The time, location, duration, and intent of the proposed fire are required as well as property ownership information. Annual permits are available from District Forester's for landowners who perform prescribed burning for forestry and timber management. A detailed annual burning plan must be submitted along with the permit application to qualify for an annual permit.

#### Review and Processing:

The Forestry Permit agents assess the application and issue a permit immediately. Ground clearing burning permits in Dare, Tyrrell, Hyde and Washington counties require an on-site inspection before a permit can be issued. All burning permits are subject to immediate cancellation pending a determination by the State Forester that hazardous forest fire conditions or generalized air pollution exists.

#### Fees:

None

#### Time Requirements:

Permits are usually issued the same day application is made and are valid for four days. Permits for up to 30 days can be issued for land clearing, highway construction, etc. Annual permits may be issued for landowners conducting large scale forestry management operations.

#### Appeal Process:

There is no appeals process.

# LOCAL REGULATORY POLICY

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## **7.0 LOCAL REGULATORY POLICY**

Local governments in North Carolina have been given a considerable degree of latitude concerning traditional local regulatory authority. Land use control and zoning are traditionally local concerns and have been specifically supported through state enabling legislation. Several state environmental regulatory programs, such as the Coastal Management Program and the Soil Erosion and Sedimentation Program, have been implemented and may be administered through local authorities.

## 7.1 Local Government Land Use Enabling Laws

Land use planning in North Carolina has traditionally been a local responsibility authorized by specific state enabling legislation. Both counties and incorporated municipalities are empowered to establish zoning regulations, develop planning agencies for exercising zoning powers and studying other development objectives, and establish subdivision regulations governing land division. Municipalities may also extend their territorial jurisdiction a certain distance prescribed by the population of the city or town.

Other state laws grant local governments the authority to implement and administer state regulatory programs which may directly and indirectly affect land use. Under the Land Use Policy Act (N.C.G.S. 113A, Article 9) and the Coastal Area Management Act (N.C.G.S. 113S, Article 7) local governments in the 20-county coastal zone are authorized to establish a permit program for certain land uses in accord with state guidelines in specific locations known as Areas of Environmental Concern (AEC). Failure to comply may result in state intervention. (See Section 5.7)

The Soil Erosion and Sedimentation Control Law is another state law which establishes a regulatory program whereby local governments may adopt and implement a program for controlling certain land disturbing activities. (See Section 6.2.)

## 7.2 Substate Planning Organizations and Land Use Controls

During the 1960's federal initiatives under the Intergovernmental Cooperation Act of 1968 encouraged multi-jurisdictional cooperation for the implementation of intergovernmental programs. Federal cooperation and coordination (such as the A-95 Clearinghouse review process) were committed to establishing a uniform system of regional planning and development entities throughout the country.

In response, North Carolina passed legislation that established substate districts, which could engage in planning and economic development activities for the constituent members of the district. The four pieces of enabling legislation are:

1. Regional Planning Commissions (GS 153A-391 through 400)
2. Economic Development Commission (GS 158-8 through 15)
3. Joint Exercise of Power (GS 160A-460 through 469)
4. Regional Council of Governments (GS 160A-470 through 484)

There are two types of districts: those which operate under the Council of Government legislation and those that were formed as Planning and Economic Development organizations. The authority vested in the Council of Government districts seems to have a broader range of power in staffing, funding, planning, and programming.

To develop a consistent policy for all substate districts and establish a central contact point for all affairs in each region, the concept of a Lead Regional Organization (LRO) was implemented. The LRO has thus become the central coordinating agency in each district and is responsible for communicating with and responding to issues generated from both the local and state/federal levels. Specific responsibilities include:

1. Regional planning and program implementation;
2. Regional A-95 Clearinghouse review;
3. Development of annual Regional Development Plan and associated work plans;
4. Provide technical assistance to members' and
5. Provide specific program services to the Department of Human Resources.

Neither the LRO's or the substate districts have the authority to levy taxes or condemn property.

LOCAL AIR QUALITY DISTRICTS

Buncombe/Haywood

Western North Carolina Regional  
Air Pollution Control Agency  
Post Office Box 7215  
Asheville, NC 28807  
704/255-5655

Charlotte/Mecklenburg

Mecklenburg County Division  
of Environmental Health  
1200 Blythe Boulevard  
Charlotte, NC 28803  
704/374-2607

Winston-Salem/Forsyth

Forsyth County Environmental  
Affairs Department  
Room 206, Government Center  
3rd and Main Street  
Winston-Salem, NC 27101  
919/727-8060

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT  
Regional Offices

Winston-Salem Regional Office  
8003 Silas Cr. Pkwy. Ext.  
Winston-Salem, NC 27106  
919/761-2351

Asheville Regional Office  
Interchange Bld.  
159 Woodfin St.  
Asheville, NC 28801  
704/253-3341

Mooresville Regional Office  
919 N. Main St.  
Mooresville, NC 28115  
704/663-1699

Fayetteville Regional Office  
Wachovia Bld.  
Suite 714  
Fayetteville, NC 28301  
919/486-1541

Raleigh Regional Office  
P.O. Box 27687  
Raleigh, NC 27611  
919/733-1214

Washington Regional Office  
1502 N. Market St.  
Washington, NC 27889  
919/946-6481

Wilmington Regional Office  
7625 Wrightsville Ave.  
Wilmington, NC 28403  
919/256-4161

Coastal Management Field Services  
108 S. Water St.  
Elizabeth City, NC 27909  
919/338-0205

Coastal Management Field Services  
1502 N. Market St.  
Washington, NC 27889  
919/946-6481

Coastal Management Field Services  
P.O. Box 769  
Morehead City, NC 28557  
919/733-2160 or 726-7021

Coastal Management Field Services  
7225 Wrightsville Ave.  
Wilmington, NC 28403  
919/256-4161

#### U.S. ARMY CORPS OF ENGINEERS DISTRICTS

Army Corps of Engineers  
Nashville District  
P.O. Box 1070  
Nashville, TN 37202  
615/749-5181

Army Corps of Engineers  
Huntington District  
P.O. Box 2127  
Huntington, WV 25712  
304/529-5487

Army Corps of Engineers  
Norfolk District  
803 Front St. - Fort Norfolk  
Norfolk, VA 23510  
804/441-3500

Army Corps of Engineers  
Wilmington District  
P.O. Box 1890  
Wilmington, NC 28402  
919/343-4511