



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
151 PATTON AVENUE  
ROOM 208  
ASHEVILLE, NORTH CAROLINA 28801-5006

May 2, 2008



Regulatory Division

Action ID No. 200530150, US 64 relocation from US 19/74/129 in Murphy to east of NC 141,  
Cherokee County, North Carolina, TIP No. R-0977A

Gregory J. Thorpe, Ph.D., Director  
Project Development and Environmental Analysis Branch  
North Carolina Department of Transportation  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

Dear Dr. Thorpe:

Reference the Department of the Army permit issued on February 2, 2005 and your written request of April 1, 2008, for a permit modification to impact additional waters of the United States at permits site numbers 5A, 11, 16B, 19, and 22. The need for such modifications was reviewed during a site visit conducted on March 12, 2008 attended by Corps of Engineers, North Carolina Division of Water Quality, and NCDOT personnel.

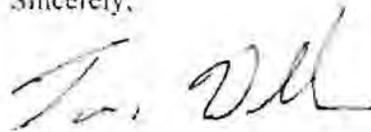
This modification includes the following impacts:

- Site 5A, New access from Martins Creek Road. The new Y-line will require the placement of 131 linear feet of RCP in an unnamed tributary to the Hiwassee River.
- Site 11, Harshaw Road. The removal of 24 linear feet of RCP and the installation of a 4-foot long junction box. This will also require the relocation of 135-feet of an unnamed tributary to the Hiwassee River using natural channel design techniques to gain additional shoulder width along Harshaw Road.
- Site 16B, Hiwassee River streambank. Twenty feet of streambank stabilization to prevent erosion and scour problems at the end of a tail ditch.
- Site 19, Redesign of the Y-line due to residential driveway conflicts. The removal of a 115-foot section of culvert from an unnamed tributary to McCombs Branch and restoration of the channel. The relocation will require the piping of a 92-foot segment and a 28-foot segment of an unnamed tributary to McCombs Branch, as well as the discharge of fill in 0.02 acre of adjacent wetlands.
- Site 22, Culvert outlet under SR 1549. The installation of one rock cross vane to alleviate erosion and accommodate aquatic life passage at the slightly perched culvert.

The additional mitigatable permit impacts (124-feet of cold stream channel and 0.03 acre of riparian wetlands) are to be mitigated for at a 1:1 ratio by payment into the North Carolina Ecosystem Enhancement Program (NCEEP). By letter of April 24, 2008, NCEEP has agreed to provide compensatory mitigation for the unavoidable impacts associated with these project modifications.

The permit is hereby modified to include the work as shown on the enclosed plans. It is understood that all conditions of the original permit remain applicable and that the expiration date is unchanged.

Sincerely,



*FE*  
John E. Pulliam, Jr.  
Colonel, U.S. Army  
District Commander

Enclosure

Copies furnished w/encl:

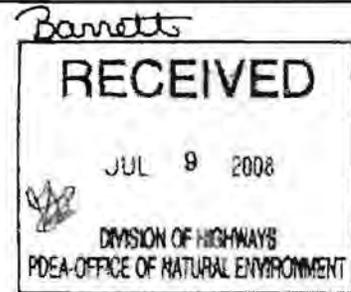
Mark Davis  
North Carolina Department of Transportation  
253 Webster Road  
Sylva, North Carolina 28779

Brian Wrenn  
North Carolina Division of Water Quality  
Transportation Permitting Unit  
1650 Mail Service Center  
Raleigh, North Carolina 27699-1650



Michael F. Easley, Governor  
William G. Ross Jr., Secretary  
North Carolina Department of Environment and Natural Resources  
Coleen H. Sullins, Director  
Division of Water Quality

June 30, 2008



Dr. Gregory J. Thorpe, PhD., Manager  
Project Development and Environmental Analysis Branch  
N.C. Department of Transportation  
1548 Mail Service Center  
Raleigh, NC 27699-1548

Subject: Correction to 401 Water Quality Certification for R-0977A, DWQ Project No. 20041594V.4  
Water Quality Certification No. 3487

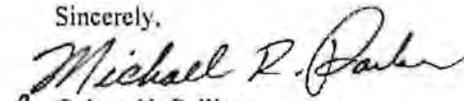
Dear Dr. Thorpe:

This letter is in regards to the 401 Water Quality Certification (WQC) issued on May 16, 2008 for TIP R-0977A (DWQ Project No. 20041549V.4) authorizing 329 linear feet of permanent and temporary stream impacts in the Hiwassee River Basin, associated with the relocation of US Highway 64 in Cherokee County. The WQC issued on May 16, 2008 failed to include 12 linear feet of permanent impacts at Site 11. This correction resulted in changes to the permitted impacts table and to Conditions 4 and 5 of the 401 Certification.

The attached 401 Water Quality Certification dated June 30, 2008 indicates these changes.

Please attach a copy of this letter and the revised 401 Certification, dated June 30, 2008, with any copies of the original Water Quality Certification. All other conditions written into the previous Water Quality Certification for this project dated February 19, 2008 still apply except where superceded by this correction. We are sorry for any inconvenience this may have caused. If you have any questions please contact Mike Parker at 829-296-4500.

Sincerely,

  
Coleen H. Sullins,  
Director

cc: David Baker, US Army Corps of Engineers, Asheville Field Office  
Chris Militscher, US EPA  
Mark Davis, Division 14, DEO  
Transportation Permitting Unit

041594V.4 (Thorpe) US Highway 64 Relocation WQC 3487

North Carolina  
*Naturally*

North Carolina Division of Water Quality  
Internet: [www.ncwaterquality.org](http://www.ncwaterquality.org)

2090 U.S. Highway 70

Swannanoa, NC 28778

Phone (828) 296-4500  
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1-877-623-6748

An Equal Opportunity/Affirmative Action Employer

**Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act with ADDITIONAL CONDITIONS**

**THIS CERTIFICATION** is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 92-217 of the United States and subject to the North Carolina Division of Water Quality (DWO) Regulations in 15 NCAC 2H, Section .0500. This certification authorizes the NCDOT to place additional fill material in 0.02 acres of wetlands and in 329 linear feet of streams in the Hiwassee River Basin in Cherokee County. The project shall be constructed pursuant to the modification request dated April 1, 2008. The authorized impacts are as described below:

**Table 1-Stream Impacts in the Hiwassee River Basin for R-0977A**

Site	Permanent Fill in Intermittent Stream (lf)	Temporary Fill in Intermittent Stream (lf)	Permanent Fill in Perennial Stream (lf)	Temporary Fill in Perennial Stream (lf)	Total Stream Impact (lf)	Stream Impacts Requiring Mitigation (lf)
Approved Impacts at Site 5A	0	0	518	0	518	518
Change in Impacts with this Approval at Site 5A	0	0	131	30	161	131
Total Impacts at Site 5A	0	0	649	30	679	649
Approved Impacts at Site 11	0	0	1,598	0	1,598	1,598
Change in Impacts with this Approval at Site 11	0	0	135*	10	145	135*
Total Impacts at Site 11	0	0	1,733	10	1,741	1,733
Impacts at Site 16B (new site)	0	0	20	0	20	0
Approved Impacts at Site 19	0	0	151	0	151	151
Change in Impacts with this Approval at Site 19	0	0	5	10	15	5**
Total Impacts at Site 19	0	0	156	10	166	156
<b>Total</b>	<b>0</b>	<b>0</b>	<b>2,558</b>	<b>50</b>	<b>2,606</b>	<b>2,538</b>

Total Additional Stream Impact for Project: 341 linear feet.

\*Site 11 - 135 linear feet of impact due to stream restoration. A total of 147 linear feet of on-site stream relocation will be conducted using natural channel design.

\*\*Site 19-Relocating pipe upstream resulting in 120 linear feet of impact. Restoring 115 linear feet of stream thus 5 linear feet of net impact and 5 linear feet of additional mitigation required.

**Table 2-Wetland Impacts in the Hiwassee River Basin for R-0977A (Riverine)**

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)	Area under Bridge (ac)	Total Wetland Impact (ac)
Approved Impacts at Site 19	0.02			0.01			0.03
<b>Total</b>	<b>0.02</b>			<b>0.01</b>			<b>0.03</b>

Total Additional Wetland Impact for Project: 0.03 acres.

The application provides adequate assurance that the discharge of fill material into the waters of the Hiwassee River Basin in conjunction with the proposed construction will not result in a violation of applicable Water Quality Standards and discharge guidelines. There, the State of North Carolina certifies that this activity will not violate the applicable portions of Section 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your modified application dated April 1, 2008 and received April 22, 2008. All authorized activities and conditions of certification associated with the original Water Quality Certification dated December 21, 2004 and modifications dated November 22, 2005 and June 16, 2006, still apply except where superseded by this certification. Should your project change, you are required to notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If any additional wetland impacts or stream impacts for this project (now or in the future) exceed one acre or 150 linear feet, respectively, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you must adhere to the conditions listed below. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This Certification will expire on the same day as the expiration date of the corresponding Corps of Engineers Permit.

**Condition(s) of Certification:**

1. All other conditions written into previous Water Quality Certifications dated December 21, 2004, November 22, 2005 and June 16, 2006 for this project still apply.
2. An additional cross vane shall be installed at Site 22 with no additional impacts.
3. A copy of this Water Quality Certification shall be maintained on the construction site at all times. In addition, this Water Quality Certification and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager.
4. Compensatory mitigation for impacts to 271 linear feet of streams at a replacement ratio of 1:1 is required. Compensatory mitigation for impacts to jurisdictional streams shall be provided by onsite stream relocations of 147 linear feet of stream. The onsite stream relocation shall be constructed in accordance with the design submitted in your April 1, 2008 application. Please be reminded that as-builts for the completed streams shall be submitted to the North Carolina Division of Water Quality 401 Wetlands Unit with the as-builts for the rest of the project. If the parameters of this condition are not met, then the permittee shall supply additional stream mitigation for the 147 linear feet of impacts.
5. Compensatory mitigation for the remaining 124 linear feet (271 lf - 147 lf = 124 lf) of impact to streams is required. We understand that you have chosen to perform compensatory mitigation for impacts to streams through the North Carolina Ecosystem Enhancement Program (EEP) and that you will forward a copy of the acceptance letter from EEP to the Division of Water Quality. Acceptance of these impacts by EEP will satisfy the Federal Clean Water Act compensatory mitigation requirements for the above-referenced project, in accordance with the Tri-Party MOA signed on July 22, 2003 and the Dual-Party MOA signed on April 12, 2004. No construction related to this modification shall begin prior to this office receiving the acceptance letter from EEP.
6. All channel relocations will be constructed in a dry work area and stabilized before stream flows are diverted. Channel relocations will be completed and stabilized, and must be approved on site by DWQ staff, prior to diverting water into the new channel. Whenever possible, channel relocations shall be allowed to stabilize for an entire growing season. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30-foot wide wooded and an adjacent 20-foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practicable. A transitional phase incorporating coir fiber and seedling establishment is allowable. Also, riprap may be allowed if it is necessary to maintain the physical integrity of the stream, but the applicant must provide written justification and any calculations used to determine the extent of riprap coverage area.
7. The permittee shall visually monitor the vegetative plantings to assess and ensure complete stabilization of the mitigation stream segments. The monitoring shall be conducted annually for a minimum of 3 years after final planting. Photo documentation shall be utilized to document the success of the riparian vegetation and submitted to DWQ in a final report within sixty (60) days after completing monitoring. After 3 years the NCDOT shall contact the DWQ to schedule a site visit to "close out" the mitigation site.
8. The Permittee shall ensure that the final design drawings adhere to the permit and to the permit drawings submitted for approval.
9. The permittee and its authorized agents shall conduct its activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act) and any other appropriate requirements of State or Federal law. If DWQ determines that such standards or laws are not being met (including failure to sustain a designated achieved use) or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, DWQ may reevaluate and modify this certification.

10. The Permittee shall report any violations of this certification to the Division of Water Quality within 24 hours of discovery.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or Coastal Area Management Act Permit. This Certification shall expire upon the expiration of the 404 or CAMA permit.

If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 30<sup>th</sup> day of June 2008

DIVISION OF WATER QUALITY

  
Coleen H. Sullins  
Director

WQC No. 3487

Attachment

cc: David Baker, USACE, Asheville Field Office  
J. B. Setzer, P.E., Division 14 Engineer  
Kathy Matthews, USEPA  
Marla Chambers, NCWRC  
Marella Buncick, USFWS  
Transportation Permitting Unit  
Mike Parker, Asheville Regional Office

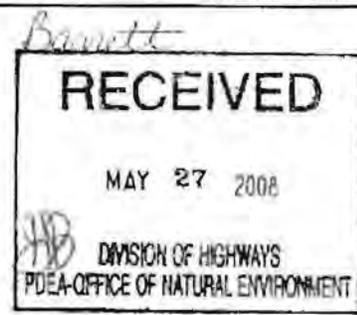


Michael F. Easley, Governor

William G. Ross Jr., Secretary  
North Carolina Department of Environment and Natural Resources

Coleen H. Sullins, Director  
Division of Water Quality

May 16, 2008



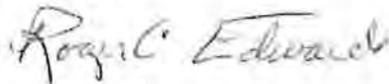
Dr. Greg Thorpe, PhD., Manager  
Project Development and Environmental Analysis  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, North Carolina, 27699-1548

Subject: Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act for Proposed Improvements to US Highway 64 from US 19/74/129 to NC 141 in Cherokee County, Federal Aid Project No. FR-14-1(1), State Project No. 8.1910203, TIP No. R-0977A, DWQ Project No. 2004-1594V.4, Water Quality Certification No. 3487

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No.3487 issued to the North Carolina Department of Transportation dated December 21, 2004 and modified November 22, 2005 and June 16, 2006. This modification is applicable only to the additional proposed activities. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated December 21, 2004 and subsequent modifications still apply except where superseded by this Certification.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,  
  
for Coleen Sullins,  
Director

Attachments

- cc: David Baker, USACE, Asheville Field Office
- J. B. Setzer, Division Engineer, NCDOT Division 14
- Kathy Matthews, Environmental Protection Agency
- Marla Chambers, NCWRC
- Marella Buncick,USFWS
- Transportation Permitting Unit
- Mike Parker, Asheville Regional Office

041594V.4 (Thorpe) US Highway 64 Relocation WQC 3487



**Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act with ADDITIONAL CONDITIONS**

**THIS CERTIFICATION** is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 92-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 211, Section .0500. This certification authorizes the NCDOT to place additional fill material in 0.02 acres of wetlands and in 329 linear feet of streams in the Hiwassee River Basin in Cherokee County. The project shall be constructed pursuant to the modification request dated April 1, 2008. The authorized impacts are as described below:

**Table 1-Stream Impacts in the Hiwassee River Basin for R-0977A**

Site	Permanent Fill in Intermittent Stream (lf)	Temporary Fill in Intermittent Stream (lf)	Permanent Fill in Perennial Stream (lf)	Temporary Fill in Perennial Stream (lf)	Total Stream Impact (lf)	Stream Impacts Requiring Mitigation (lf)
Approved Impacts at Site 5A	0	0	518	0	518	518
Change in Impacts with this Approval at Site 5A	0	0	131	30	161	131
<b>Total Impacts at Site 5A</b>	<b>0</b>	<b>0</b>	<b>649</b>	<b>30</b>	<b>679</b>	<b>649</b>
Approved Impacts at Site 11	0	0	1,598	0	1,598	1,598
Change in Impacts with this Approval at Site 11	0	0	123*	10	133	123*
<b>Total Impacts at Site 11</b>	<b>0</b>	<b>0</b>	<b>1,721</b>	<b>10</b>	<b>1,731</b>	<b>1,721</b>
Impacts at Site 16B (new site)	0	0	20	0	20	0
Approved Impacts at Site 19	0	0	151	0	151	151
Change in Impacts with this Approval at Site 19	0	0	5	10	15	5**
<b>Total Impacts at Site 19</b>	<b>0</b>	<b>0</b>	<b>156</b>	<b>10</b>	<b>166</b>	<b>156</b>
<b>Total</b>	<b>0</b>	<b>0</b>	<b>2,546</b>	<b>50</b>	<b>2,596</b>	<b>2,526</b>

**Total Additional Stream Impact for Project: 329 linear feet.**

\*Site 11 - 135 linear feet of impact due to stream restoration minus 12 linear feet of pipe removal. A total of 147 linear feet of on-site stream relocation will be conducted using natural channel design.

\*\*Site 19-Relocating pipe upstream resulting in 120 linear feet of impact. Restoring 115 linear feet of stream thus 5 linear feet of net impact and 5 linear feet of additional mitigation required.

**Table 2-Wetland Impacts in the Hiwassee River Basin for R-0977A (Riverine)**

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)	Area under Bridge (ac)	Total Wetland Impact (ac)
Approved Impacts at Site 19	0.02			0.01			0.03
<b>Total</b>	<b>0.02</b>			<b>0.01</b>			<b>0.03</b>

**Total Additional Wetland Impact for Project: 0.03 acres.**

The application provides adequate assurance that the discharge of fill material into the waters of the Hiwassee River Basin in conjunction with the proposed construction will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Section 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your modified application dated April 1, 2008 and received April 22, 2008. All authorized activities and conditions of certification associated with the original Water Quality Certification dated December 21, 2004 and modifications dated November 22, 2005 and June 16, 2006, still apply except where superseded by this certification. Should your project change, you are required to notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If any additional wetland impacts or stream impacts for this project (now or in the future) exceed one acre or 150 linear feet, respectively, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you must adhere to the conditions listed below. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This Certification will expire on the same day as the expiration date of the corresponding Corps of Engineers Permit.

#### Condition(s) of Certification:

1. All other conditions written into previous Water Quality Certifications dated December 21, 2004, November 22, 2005 and June 16, 2006 for this project still apply.
2. An additional cross vane shall be installed at Site 22 with no additional impacts.
3. A copy of this Water Quality Certification shall be maintained on the construction site at all times. In addition, this Water Quality Certification and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager.
4. Compensatory mitigation for impacts to 259 linear feet of streams at a replacement ratio of 1:1 is required. Compensatory mitigation for impacts to jurisdictional streams shall be provided by onsite stream relocations of 147 linear feet of stream. The onsite stream relocation shall be constructed in accordance with the design submitted in your April 1, 2008 application. Please be reminded that as-builts for the completed streams shall be submitted to the North Carolina Division of Water Quality 401 Wetlands Unit with the as-builts for the rest of the project. If the parameters of this condition are not met, then the permittee shall supply additional stream mitigation for the 147 linear feet of impacts.
5. Compensatory mitigation for the remaining 112 linear feet ( $259 \text{ lf} - 147 \text{ lf} = 112 \text{ lf}$ ) of impact to streams is required. We understand that you have chosen to perform compensatory mitigation for impacts to streams through the North Carolina Ecosystem Enhancement Program (EEP) and that you will forward a copy of the acceptance letter from EEP to the Division of Water Quality. Acceptance of these impacts by EEP will satisfy the Federal Clean Water Act compensatory mitigation requirements for the above-referenced project, in accordance with the Tri-Party MOA signed on July 22, 2003 and the Dual-Party MOA signed on April 12, 2004. No construction related to this modification shall begin prior to this office receiving the acceptance letter from EEP.
6. All channel relocations will be constructed in a dry work area and stabilized before stream flows are diverted. Channel relocations will be completed and stabilized, and must be approved on site by DWQ staff, prior to diverting water into the new channel. Whenever possible, channel relocations shall be allowed to stabilize for an entire growing season. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30-foot wide wooded and an adjacent 20-foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practicable. A transitional phase incorporating coir fiber and seedling establishment is allowable. Also, riprap may be allowed if it is necessary to maintain the physical integrity of the stream, but the applicant must provide written justification and any calculations used to determine the extent of riprap coverage area.
7. The permittee shall visually monitor the vegetative plantings to assess and ensure complete stabilization of the mitigation stream segments. The monitoring shall be conducted annually for a minimum of 3 years after final planting. Photo documentation shall be utilized to document the success of the riparian vegetation and submitted to DWQ in a final report within sixty (60) days after completing monitoring. After 3 years the NCDOT shall contact the DWQ to schedule a site visit to "close out" the mitigation site.
8. The Permittee shall ensure that the final design drawings adhere to the permit and to the permit drawings submitted for approval.
9. The permittee and its authorized agents shall conduct its activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act) and any other appropriate requirements of State or Federal law. If DWQ determines that such standards or laws are not being met (including failure to sustain a designated achieved use) or that State or Federal law is being violated, or that further conditions are necessary to assure compliance, DWQ may reevaluate and modify this certification.

10. The Permittee shall report any violations of this certification to the Division of Water Quality within 24 hours of discovery.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or Coastal Area Management Act Permit. This Certification shall expire upon the expiration of the 404 or CAMA permit.

If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 16<sup>th</sup> day of May 2008

DIVISION OF WATER QUALITY



Coleen Sullins  
Director

WQC No. 3487