

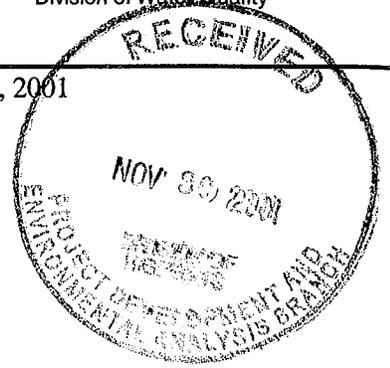


Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Gregory J. Thorpe, Ph.D.
Acting Director
Division of Water Quality

4LR

November 26, 2001



Mr. William D. Gilmore, P.E., Manager
NCDOT Planning and Environmental Branch
1548 Mail Service Center
Raleigh, NC, 27699-1548

DEC - 3 2001

Dear Mr. Gilmore:

Re: MODIFICATION to Water Quality Certification pursuant to §401 Federal Clean Water Act.
US 421 from east of SR 2433 to east of SR 2309; Wilkes County;
State Project No. 6.769001T; TIP No. R-2239B
DWQ Project No. 990267

Attached hereto is a copy of the modification to Certification No. 3227 issued to The North Carolina Department of Transportation dated November 26, 2001.

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

Sincerely,

Gregory J. Thorpe, Ph.D.
Acting Director

Attachments

cc: Wilmington District Corps of Engineers
Jean Manuele, USACE Raleigh Field Office
Jennifer Frye, NCDWQ Mooresville Regional Office
Central Files
File Copy

NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H, Section .0500. This certification authorizes the NCDOT to incur the following permanent impacts: 1.98 acres of jurisdictional and 8,301 linear feet of perennial stream channels in Wilkes County, as described in the application dated 6 January 1998, and updated 17 September 2001. The project shall be constructed pursuant to the application dated January 6, 1998 filed to relocate and widen US 421 from east of SR 2433 to east of SR 2309 (TIP No. R-2239B).

The application provides adequate assurance that the discharge of fill material into Brier Creek and its unnamed tributaries, unnamed tributaries of Grays Creek, Yadkin River, and North Little Hunting Creek in conjunction with the proposed development 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 Sections 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 application, and as described in the Public Notice. Should your project change, you are required to notify the DWQ *in writing*, and you may be required to 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 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 are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion Control, Non-discharge and Water Supply watershed regulations. This Certification shall expire three (3) years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding Corps of Engineers Permit, whichever is sooner.

Condition(s) of Certification:

1. The applicant must follow the appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of *the North Carolina Sediment and Erosion Control Planning and Design Manual* or *the North Carolina Surface Mining Manual*, whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) and shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard (50 NTUs in all fresh water streams and rivers not designated as trout waters; 25 NTUs in all lakes and reservoirs, and all saltwater classes; and 10 NTUs in trout waters);
2. Sediment and erosion control measures shall not be placed in wetlands or waters to the maximum extent practicable. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, they shall be removed and the natural grade restored after the Division of Land Resources has released the project;
3. Land clearing in wetlands shall conform to Method III (no clearing beyond toe of slope).
4. Storm water shall be directed to buffer areas or retention basins and should not be routed directly into streams. Existing vegetated buffers shall not be mowed in order to utilize it for storm water sheet flow.

5. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this Certification. Should this occur, compensatory mitigation will be required since it is a direct impact from road construction activities.
6. Placement of culverts and other structures in waters, streams, and wetlands shall be placed below the elevation of the streambed to allow low flow passage of water and aquatic life unless it can be shown to DWQ that providing passage would be impractical. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or stream beds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested in writing by DWQ.
7. *Mitigation:* Compensatory mitigation shall be the same as that approved by the US Army Corps of Engineers as long as the mitigation required equals a ratio of 1:1 restoration or creation of lost wetland acres as described in 15A NCAC 2H.0506 (h)(6) and (7). A report must be submitted to the NC Division of Water Quality that describes the final approved wetland and stream mitigation for this project within two (2) months of the issuance of the 404 permit issued by the Army Corps of Engineers.

Compensatory mitigation is required for wetland impacts of 1.98 acres. NCDOT will mitigate these impacts at Shepherd's Tree Mitigation Site.

Compensatory mitigation is required for stream impacts. 7,867 linear feet of stream mitigation is required at a 2:1 ratio. A total of 15,734 linear feet of stream mitigation shall be provided in accordance with the contract with the North Carolina Wildlife Resources Commission prepared for the US 421 project in Watauga County (R-0529). DWQ shall be involved in the selection of stream mitigation sites. An interim report is due to DWQ by 31 October 1999 to describe the progress made in locating suitable and available stream mitigation sites for this project. Conservation easements or fee-simple land purchase shall be done by 30 April 1999 to ensure 1:1 replacement of impacted streams. DWQ shall be sent a report depicting the mitigation sites by 31 October 1999. DOT shall submit a copy of the stream mitigation monitoring protocol to DWQ for written approval. This protocol shall include monitoring of macrobenthos and streambank stability for a total of five (5) years.

In accordance with 15A NCAC 2H .0500, this contribution will satisfy our compensatory mitigation requirements under 15A NCAC 2H.0506(h). Until plans are received and approved for the stream relocation using natural channel design, wetland or stream fill shall not occur.

8. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality upon completion of the project.
9. The Applicant shall require its contractors (and/or agents) to comply with all of the terms of this Certification, and shall provide each of its contractors (and/or agents) a copy of this Certification.

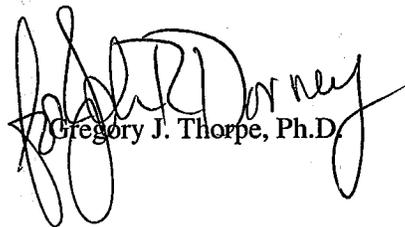
Violations of any condition herein set forth shall result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and

void unless the above conditions are made conditions of the Federal Permit. This Certification shall expire upon the expiration of the 404 Permit.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This certification and its conditions are final and binding unless you ask for a hearing.

This the 26th day of November 2001

DIVISION OF WATER QUALITY



Gregory J. Thorpe, Ph.D.

WQC No. 3227

DWQ Project No.: _____
Applicant: _____

County: _____

Project Name: _____

Date of Issuance of 401 Water Quality Certification: _____

Certificate of Completion

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1650 Mail Service Center, Raleigh, NC, 27699-1650. This form may be returned to DWQ by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

Applicant's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

Agent's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

Engineer's Certification

_____ Partial _____ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project, for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification, the approved plans and specifications, and other supporting materials.

Signature _____ Registration No. _____

Date _____