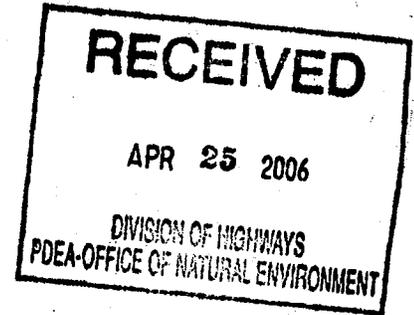




Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

April 11, 2006



Mr. Kevin Bowen, PE, Resident Engineer
PO Box 3165
Wilson, NC 27895

Dear Mr. Bowen:

Re: Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Modification of Neuse River Buffer Authorization for Proposed Construction of US 70 (Clayton Bypass) from I-40 to US 70 Business in Wake and Johnston Counties, TIP No. R-2552AA, AB, B and C, State Project No. 8.T311002, Federal Aid Project No. NHF-60-1(9).
DWQ Project No. 041760

Attached hereto is a modification of Certification No. 3496 issued to The North Carolina Department of Transportation dated January 14, 2005 (modified April 14, 2005). The attached modification authorizes 0.26 acres of additional temporary wetland impacts at Site C-11 for the purpose of clean up from the directional drilling operation that resulted in approximately 0.26 acres of slurry/mud deposit on the surface of the wetland. 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with the original Water Quality Certification dated January 14, 2005 (modified April 14, 2005) still apply except where superceded by this certification.

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

Sincerely,

Alan W. Klimek, P.E.
Director

Attachments

cc: Mr. Eric Alsmeyer, Corps of Engineers Raleigh Field Office
Mr. Christopher Militscher, US EPA, Region IV
Mr. Richard Greene, JR, PE, Division 4 Engineer, PO Box 3165, Wilson, NC 27895
Mr. Jamie Guerrero, Division 4 Environmental Officer, PO Box 3165, Wilson, NC 27895
Mr. Jon Nance, PE, Division 5 Engineer, 2612 N. Duke St., Durham, NC 27704
Mr. Chris Murray, Division 5 Environmental Officer, 2612 N. Duke St., Durham, NC 27704
Mr. Tyler Stanton, NEU, 2728-240 Capital Blvd., Parker Lincoln Bldg., Raleigh, NC 27604
NCDWQ Raleigh Regional Office
File Copy

**Modification of APPROVAL OF 401 Water Quality Certification and ADDITIONAL CONDITIONS
And Neuse River Buffer Rules**

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. The project shall be constructed pursuant to the modification dated received April 4, 2006 to construct US 70 (Clayton Bypass) from I-40 to US 70 Business in Wake and Johnston Counties. The attached modification authorizes 0.26 acres of additional temporary wetland impacts at Site C-11 for the purpose of clean up from the directional drilling operation that resulted in approximately 0.26 acres of slurry/mud deposit on the surface of the wetland. 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 January 14, 2005 (modified April 14, 2005) still apply except where superseded by this certification. The authorized impacts are as described below:

Section AA Wetland Impacts in the Neuse River Basin

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)
AA1b				0.01	
AA2b	0.01			0.01	
AA4b				0.01	
AA5b	0.03			0.02	
AA6	0.03			0.01	
AA7	0.03			0.01	
AA8	0.05			0.02	
AA9	0.01			0.01	
AA10a	0.01			0.01	
AA10b					0.12
AA11a, 11b, 11c	2.31			0.06	
AA12	0.01				
AA14	0.16	0.02			1.48
AA16	0.04			0.02	
Total	2.69	0.02		0.19	1.60

Section AB Wetland Impacts in the Neuse River Basin

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)
AB1	0.11			0.01	
AB3	0.04			0.01	
AB4	0.01	0.01			0.08
AB5b	0.07			0.02	
AB5c	0.08			0.01	
AB7	0.09				
AB6a	0.01		0.01		
AB8	0.17			0.05	
AB9	0.09			0.01	
AB10	0.45			0.02	
AB11	0.47			0.03	
Total	1.59	0.01	0.01	0.16	0.08

Section B Wetland Impacts in the Neuse River Basin

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)
1	0.16			0.045	
2	0.429			0.046	
3	1.203			0.081	
4	1.217			0.028	
5	1.899		0.175	0.117	
12	0.117				
Total	5.025		0.175	0.317	

Section C Wetland Impacts in the Neuse River Basin

Site	Fill (ac)	Fill (temporary) (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)
C1	0.04	0.03		0.04	
C2				0.06	
C3	2.26			0.11	
C6	1.77		0.01	0.40	
C7	1.18		0.36	0.13	
C7 modification April 14, 2005		0.10			
C8	1.06				
C9	0.01			0.02	
C10	0.02			0.04	
C11	0.97		0.36	0.27	
C11 New impacts with this modification		0.26			
C12				0.03	
C13	0.97			0.22	
C14	0.12		0.02	0.21	
C15	1.09			0.29	
C16			0.01	0.05	
Original 401 WQC Totals	9.49	0.03	0.76	1.87	
Totals April 14, 2005	9.49	0.13	0.76	1.87	
New Totals with this modification	9.49	0.39	0.76	1.87	

Section AA Surface Water and Stream Impacts in the Neuse River Basin

Site	Permanent Fill in Surface Water (ac)	Temporary Fill in Surface Water (ac)	Permanent Stream Impacts (ft)	Temporary Stream Impacts (ft)	Natural Channel Design (ft)
AA1b				10	
AA3a	0.01		26	13	
AA3b	0.01		13	10	
AA4b	0.02		128	30	
AA5a	0.01		236		
AA5b	0.05		391	10	
AA10a	0.07		30	20	
AA10b			10	10	
AA11a	0.05		437		
AA11b	0.04		417	20	
AA11c	0.04		407		
AA14		0.01			
AA15a	0.01		85	10	
AA15b	0.01		98	20	
AA16	0.79		10	10	
AA17	0.03		240		
AA18a	0.45		355	10	
AA18b	0.03		167	20	
Total	1.62	0.01	3,050	193	

Section AB Surface Water and Stream Impacts in the Neuse River Basin

Site	Permanent Fill in Surface Water (ac)	Temporary Fill in Surface Water (ac)	Permanent Stream Impacts (ft)	Temporary Stream Impacts (ft)	Natural Channel Design (ft)
AB2		0.05	325	98	
AB4	0.01	0.02			
AB5b			128	26	
AB5c	0.06		364	108	
AB5d	0.13		561	13	
AB7	0.13				
AB6a	0.02		102	10	
AB6b	0.09		226		
AB8	0.01		118	23	
AB11	0.06		351	131	
Total	0.51	0.07	2,175	409	

Section B Surface Water and Stream Impacts in the Neuse River Basin

Site	Permanent Fill in Surface Water (ac)	Temporary Fill in Surface Water (ac)	Permanent Stream Impacts (ft)	Temporary Stream Impacts (ft)	Natural Channel Design (ft)
1	0.043	0.024	191	105	
2	0.063	0.020	276	88	
3	0.071	0.009	475	62	
4	0.103	0.010	673	71	
5	0.245	0.024	722	73	410
6	0.103	0.008	443	46	
7	0.025		163		
8		0.002	6	30	
9	0.081	0.026	354	115	
10	0.024	0.011	127	58	
11	0.274				
12	0.065	0.031	388	166	
Total	1.097	0.165	3.818	814	410

Section C Surface Water and Stream Impacts in the Neuse River Basin

Site	Permanent Fill in Surface Water (ac)	Temporary Fill in Surface Water (ac)	Permanent Stream Impacts (ft)	Temporary Stream Impacts (ft)	Natural Channel Design (ft)
C1		0.28	115		
C2	1.54				
C4			26		
C5	0.03	0.01	282		
C6	0.06	0.02	272		
C7	0.06				
C10	0.02		52		
C12			16		
C13	0.01		30		
C14	0.01	0.01	33		
C16	0.01	0.01	52		
Total	1.74	0.33	878		

Section AA Neuse Riparian Buffer Impacts

Site	Zone 1 (sq. ft.)	Zone 2 (sq. ft.)	Wetlands in Zone 1 (sq. ft.)	Wetlands in Zone 2 (sq. ft.)	Mitigation Required Zone 1 (sq. ft.)	Mitigation Required Zone 2 (sq. ft.)
AA1a	431	2,611				
AA1b	2,125	1,765	108			
AA3a	3,718	4,049			3,718	4,049
AA3b	4,112	4,392			4,112	4,392
AA4a	11,348	8,145			11,348	8,145
AA4b	8,830	6,470	108		8,722	6,470
AA5a	41,581	32,338	194	108	41,387	32,230
AA5b	-see AA5a for site totals-					
AA6			108	323		
AA10a	11,797	9,601	215		11,582	9,601
AA10b	18,156	14,594	538	108		
AA11b	46,633	32,446	39,339	15,193	7,294	17,253
AA11c	-see AA11b for site totals-					
AA13	3,720	5,909				
AA14	18,514	15,334	17,776	11,976		
AA15a	5,572	4,048				
AA15a impacts with April 14, 2005 modification	1,800	1,200				
AA15b	6,284	8,148				
AA16	27,649	19,749	2,690		24,959	19,749
AA18a	28,646	18,336			28,646	18,336
AA18b	8,818	6,899			8,818	6,899
AA19	2,165	1,922			2,165	1,922
Original 401 WQC Total	239,124	196,756	61,076	27,708	152,751	129,046
Total with April 14, 2005 modification	240,924	197,956	61,076	27,708	152,751	129,046

Section AB Neuse Riparian Buffer Impacts

Site	Zone 1 (sq. ft.)	Zone 2 (sq. ft.)	Wetlands in Zone 1 (sq. ft.)	Wetlands in Zone 2 (sq. ft.)	Mitigation Required Zone 1 (sq. ft.)	Mitigation Required Zone 2 (sq. ft.)
AB2	24,211	15,173			24,211	15,173
AB4	18,478	13,016	8,229			
AB5c	58,509	44,230			58,509	44,230
AA5d	-see AB5c for site totals-					
AB7			9,272			
AB8	7,294	4,831				
AB11	20,326	13,775	14,761		5,565	13,775
Total	128,818	91,025	32,262		88,285	73,178

Section B Neuse Riparian Buffer Impacts

Site	Zone 1 (sq. ft.)	Zone 2 (sq. ft.)	Wetlands in Zone 1 (sq. ft.)	Wetlands in Zone 2 (sq. ft.)	Onsite Buffer Replacement Zone 1 (sq. ft.)	Onsite Buffer Replacement Zone 2 (sq. ft.)	Mitigation Required Zone 1 (sq. ft.)	Mitigation Required Zone 2 (sq. ft.)
1	11,250	12,196	5,985	1,715			5,265	10,481
2	14,866	11,954	10,382	4,527			4,484	7,427
3	24,801	19,088	19,247	10,620			5,554	8,468
4	36,511	30,223	27,400	11,569			9,111	18,654
5	37,785	37,688	21,034	17,609	9,671	7,494	7,080	12,585
6	25,889	12,148					25,889	12,148
7	4,845	5,626						
8	1,147	2,138						
9	20,306	18,380					20,306	18,380
10	14,886	11,323			5,566	4,911	9,320	6,412
10 Impacts with April 14, 2005 modification	1,800	1,200					-9,320	-6,412
11	11,071	5,718					11,071	5,718
12	36,491	12,865	3,498	1,787	5,770	3,111	27,223	7,967
Original 401 WQC Total	239,848	179,347	87,546	47,827	21,007	15,516	125,303	108,240
Total with April 14, 2005 modification	241,648	180,547	87,546	47,827	21,007	15,516	115,983	101,828

Section C Neuse Riparian Buffer Impacts

Site	Zone 1 (sq. ft.)	Zone 2 (sq. ft.)	Wetlands in Zone 1 (sq. ft.)	Wetlands in Zone 2 (sq. ft.)	Mitigation Required Zone 1 (sq. ft.)	Mitigation Required Zone 2 (sq. ft.)
C1	25,272	13,712		86		
C4	2,097	861				
C5	19,889	13,157			19,889	13,157
C6	19,472	13,196	19,472	12,454		742
C9	549	958			549	958
C10	5,479	2,099	1,929	75		
C12	2,712	1,087	1,119	75		
C13	1,937	850	1,676	829		
C14	4,801	2,390	2,863	1,454		
C16	4,176	2,153	593	321		
Total	86,384	50,463	27,652	15,294	20,438	14,857

Mitigation Requirements for Neuse Riparian Buffers Project Wide

	Impact (sq. ft.)	Replacement Ratio	Total Impact (sq. ft.)	Fee schedule	Payment amount for Mitigation
Zone 1	386,777	3:1	1,160,331	\$0.96/sq. ft.	\$1,113,917.76
Zone 1 totals with April 14, 2005 modification	377,457	3:1	1,132,371	\$0.96/sq. ft.	\$1,087,076.16
Zone 2	325,321	1.5:1	487,981.5	\$0.96/sq. ft.	\$468,462.24
Zone 2 totals with April 14, 2005 modification	318,909	1.5:1	478,764	\$0.96/sq. ft.	\$459,228.96
Original 401 WQC Total Mitigation Payment Required					\$1,582,380.00
Total Mitigation Payment Required with April 14, 2005					\$1,546,305.12

The application provides adequate assurance that the discharge of fill material into the waters of the Neuse River Basin 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 modified application dated received April 4, 2006. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated January 14, 2005 (modified April 14, 2005) 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 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, Coastal Stormwater, Non-discharge and Water Supply watershed regulations. This Certification shall expire three 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. Construction will be conducted in such a manner as to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Erosion and sediment control practices must 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.
 - a. The erosion and sediment control measures for the project must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the North Carolina Sediment and Erosion Control Planning and Design Manual. These devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
 - b. For borrow pit sites, the erosion and sediment control measures must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the North Carolina Surface Mining Manual. The reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act.

2. All 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. If concrete is used during construction, a dry work area should be maintained to prevent direct contact between curing concrete and stream water. Water that inadvertently contacts uncured concrete should not be discharged to surface waters due to the potential for elevated pH and possible aquatic life and fish kills.
4. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit. Should waste or borrow sites be located in wetlands or stream, compensatory mitigation will be required since it is a direct impact from road construction activities.
5. 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.
6. During the construction of the project, no staging of equipment of any kind is permitted in waters of the U.S., or protected riparian buffers.
7. All temporary fills in wetlands and surface waters shall be removed upon completion of the project. In addition, the post-construction removal of any temporary bridge structures or fill will need to return the project site to its preconstruction contours and elevations. The revegetation of the impacted areas with appropriate native species will be required.
8. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids, or other toxic materials.
9. Discharging hydroseed mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is prohibited.
10. The outside buffer, wetland or water boundary located within the construction corridor approved by this authorization shall be clearly marked by highly visible fencing prior to any land disturbing activities. Impacts to areas within the fencing are prohibited unless otherwise authorized by this certification.
11. NCDOT, 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 law and Federal law. If DWQ determines that such standards or laws are not being met (including the failure to sustain a designated or 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 to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15A NCAC 2H.0507(d). Before modifying the certification, DWQ shall notify NCDOT and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503 and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to NCDOT in writing, shall be provided to the United States Army Corps of Engineers for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.
12. A copy of this Water Quality Certification shall be posted on the construction site at all times. In addition, the Water Quality Certification and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager.

13. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit. Should waste or borrow sites be located in wetlands or stream, compensatory mitigation will be required since it is a direct impact from road construction activities.
14. Any violations, during the construction of the approved project, of this 401 Water Quality Certification or the North Carolina State Water Quality Standards as defined in 15A NCAC 2B .0200 Rules, shall be reported immediately to the North Carolina Division of Water Quality.

Project Specific Conditions:

15. Due to the possibility that compaction and/or other site alterations might prevent the temporary wetland impact area from re-attaining jurisdictional wetland status, the permittee shall provide an annual update on the wetland areas at Site C-11. This annual update will consist of photographs and a brief report on the progress of these temporarily impacted areas in re-attaining wetland jurisdictional status. Three years after project completion, the permittee shall schedule an agency field meeting with the NC Division of Water Quality to determine if the wetland areas temporarily impacted by this project have re-attained jurisdictional wetland status. If at the end of three years the wetland areas temporarily impacted by this project have not re-attained jurisdictional wetland status, NC DWQ shall determine if compensatory wetland mitigation will be required.
16. For the 0.26 acres of impact at the wetland site located at C-11, the permittee shall plant 680 stems/acre. Vegetation success shall be measured by survivability over a 3-year monitoring period. Survivability will be based on 320 stems/acre after three (3) years. A survey of vegetation during the growing season shall be conducted annually over the three-year monitoring period and submitted to the NC Division of Water Quality. If the surviving vegetation densities are below the required thresholds after the three-year monitoring period, the site may still be declared successful at the discretion of and with written approval from the NC Division of Water Quality.
17. For the 0.26 acres of impact at the wetland site located at C-11, hydrologic success of the sites will be attained by restoration of a hydrologic regime that results in inundation or saturation of the soils within 12 inches of the ground surface for at least 12.5 percent of the growing season. The hydrologic monitoring shall persist for a total of three (3) years. After the three-year monitoring period, if the monitoring requirements are not met, the site may still be declared successful at the discretion of and with written approval from the NC Division of Water Quality.
18. Upland clearing limits must be approved by the Division of Land Resources prior to any land disturbing activities. A copy of the final clearing method and plan for upland areas shall be submitted to the Division of Land Resources for approval prior to incurring impacts on the project.
19. At Sites AA11a, AA11b and AA11c 4:1 side slopes will be utilized due to concerns for public safety.
20. At site C11 the pipe will be placed at natural ground without draining and/or impacting the nearby wetland.
21. In accordance with your application, the following sediment and erosion controls measures will be implemented in accordance with the plan submitted to, and approved by, the Division of Land Resources. Failure to comply with the conditions listed below, will constitute violation of the 401 Water Quality Certification if that failure results in a violation of state water quality standards:

- Basins will be designed to meet the surface area requirement for the peak runoff event for a 25-year storm.
- Basins located at critical discharge points on the project will utilize the Faircloth Skimmer with jute baffles and polyacrylamides (PAMs) to improve settling efficiency
- Exposed areas located adjacent to critical areas will utilize erosion control matting to assist in stabilization.
- Erosion control matting will be utilized in ditchlines to reduce accelerated erosion.
- An onsite inspector will review the sedimentation and erosion control devices daily to insure compliance with the sedimentation and erosion control plan.
- The Roadside Environmental Unit will provide drive through inspections weekly to insure compliance with the Sedimentation Pollution Control Act.
- DOT will propose a hydroseeding timeline for less than 14 days to insure that all exposed erodable areas are protected from storm events.
- Hazardous Spill Catch Basin installation will be phased on Ramp D and temporary sediment traps will be utilized during the installation to insure that sediment laden runoff is not transported offsite.
- Field changes to the Sediment and Erosion Control Plan will go through Roadside Environmental.
- A water quality monitoring program will be in place to identify any sources of sediment discharge to Swift Creek from construction activities.

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 11th day of April 2006

DIVISION OF WATER QUALITY

A handwritten signature in black ink, appearing to read "Alan W. Klimek", with a long horizontal flourish extending to the right.

Alan W. Klimek, P.E.
Director

WQC No. 3496