



*Stream Mitigation & 404 Permit
Assumption*



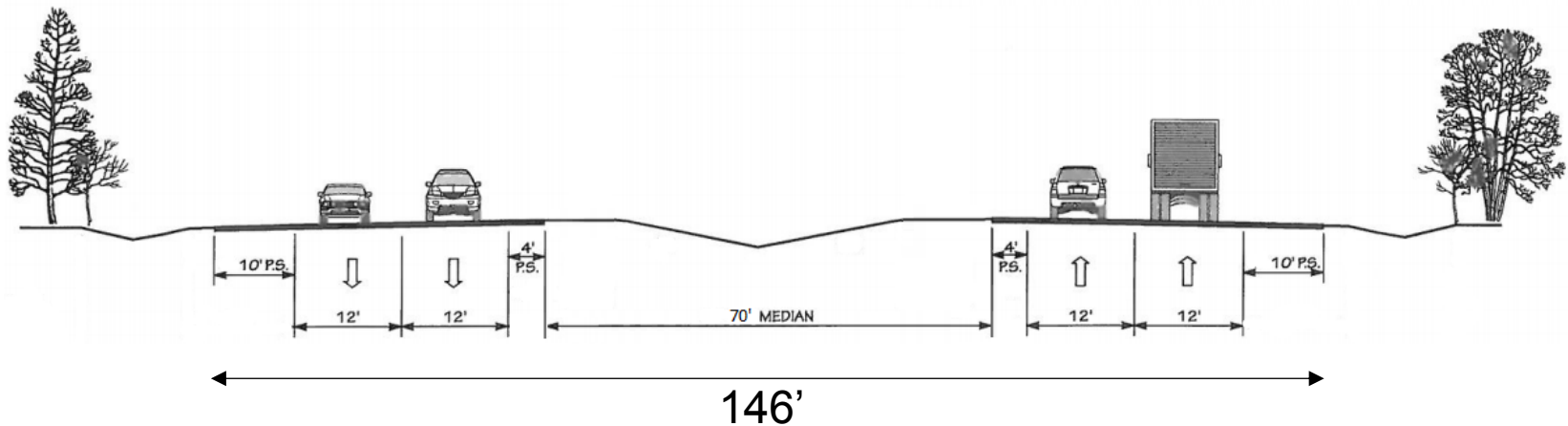
Stream Mitigation Issue

- Mitigation Threshold for Stream Impacts in NC is 150 linear feet
 - Enforced by Wilmington District of Army Corps
 - Where did 150 feet come from?
 - What threshold is used by other Corps Districts?



150 Linear Foot Threshold

- Developed in the 1990's with NCDOT
- Considered their largest typical project
 - Four-lane divided highway with median and shoulders



Stream Mitigation

Summary of Corps Districts

	Wilmington	Norfolk	Louisville	Savannah	Mobile	Charleston
Mitigation Threshold	150 lf*	300 lf*	300 lf* or 0.1 acre*	100 lf*	300 lf* or 0 lf*	0 lf*
Whole Amount or Amount Above Threshold?	Whole Amount	Whole Amount	Whole Amount	Whole Amount	Whole Amount	Whole Amount
Mitigate Ephemeral Streams?	No*	No*	Yes*	No*	Yes*	No*
Mitigate Intermittent Streams?	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*
Mitigate Perennial Streams?	Yes*	Yes*	Yes*	Yes*	Yes*	Yes*

* Whether to require mitigation (and how much) is a permit decision by the U.S. Army Corps of Engineers Project Manager.

No-Net Loss

- In 1989, President George H. W. Bush established the National policy of “No-Net Loss of Wetlands”
 - To meet this goal, mitigation is required for all impacts, not just those above a threshold
- Mitigation threshold is an incentive for projects to avoid and minimize impacts to waters
 - The larger the impact, the more cumulative impact to the system

404 Program Assumption

- Impacts to wetlands & streams in NC require 2 determinations
 - 401 Certification – Issued by DWR
 - 404 Permit – Issued by Army Corps of Engineers
- Clean Water Act allows States to assume 404 program & associated permitting responsibilities
 - 2 States have assumed program: Michigan & New Jersey
 - Requires EPA & Army Corps approval
 - Would reduce duplicative permitting requirements
- NC has considered 404 program assumption in the past



404 Programmatic Assumption

Basic Requirements

- **Jurisdiction over all waters of the U.S.**
 - Including wetlands, other than waters where the Corps retains jurisdiction
- **Authority to regulate all activities** that are regulated under federal law
- **Permitting standards and procedures** that will be at least as stringent as the existing federal permit program & ensure consistency with the federal permitting criteria
- **Compliance and enforcement authority**
 - Including the ability to enforce permit conditions and to address violations with penalty levels comparable to federal fines
- **Program funding and staffing** sufficient to implement and enforce the program



404 Programmatic Assumption

Application

- Letter from Governor requesting program approval
- Complete program description
- Statement from Attorney General
 - Laws and regulations of the state provide adequate legal authority to carry out the program and meet applicable federal law requirements
- Memorandum of Agreement with USEPA Regional Administrator
- Memorandum of Agreement with Secretary of the Army
- Copies of all applicable state statutes and regulations
 - Including those governing applicable state administrative procedures



404 Programmatic Assumption Steps

1. Investigate/study State §404 assumption
2. Legal comparison of state and federal regulation
3. Amend state laws and/or regulations
4. Discuss with state, federal and local agencies
5. Develop supporting materials (e.g. staff guidelines, application forms...) and train staff
6. Compile full documentation of program for application
7. Identify program funding
8. Enter into a cooperative agreement with USEPA
9. Enter into a cooperative agreement with USACE
10. Submit an application for assumption to EPA
11. Decision from EPA



404 Programmatic Assumption

Benefits

- Reduced duplication in state and federal programs
- NC has robust 401 program to adapt to 404 assumption
- Often faster state processes
- Incorporation of state goals and policies into one permitting process
- More effective natural resource management
- Access to state appeal processes and courts
- Consistency in permit decisions

Challenges and Potential Obstacles

- Align regulatory criteria
- Financial cost to the state
 - Study/investigate §404 assumption
 - Implement program
- Financial cost to applicants
- Some waters remain under USACE jurisdiction
 - Section 10 and adjacent wetlands
- Approval process is time consuming
 - No certainty of a favorable outcome
- State assumes Army Corps reporting requirements to EPA

State Programmatic General Permit (SPGP)

- Permit issued by the Corps authorizing states to issue permits for specified activities
 - permit administered by the state
 - Designed to avoid duplication of effort between the Corps and the state
 - Designed to make permitting process more efficient
 - Applies to Section 10 waters
 - DEQ could receive authorization for 404 permitting for
 - Linear transportation projects
 - Residential / Commercial / Industrial projects

State Programmatic General Permit (SPGP)

- Minimum criteria must be met:
 1. Every project authorized under a SPGP can cause no more than minimal adverse environmental effects
 2. SPGP implementation must:
 - a) Simplify the evaluation process for applicants
 - b) Reduce duplication between the state and Corps
 - c) Must not increase the number of individual permits
 3. SPGP must provide protection for aquatic resources at least equivalent to the Corps
 4. SPGP implementation must not increase Corps workload
 5. Every project authorized under an SPGP must comply with all Federal environmental laws and must ensure that all relevant Federal interests will be protected (e.g. national defense, navigation, endangered species)