



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

MEMORANDUM

TO: ENVIRONMENTAL REVIEW COMMISSION
The Honorable David Rouzer, Chair
The Honorable Mitch Gillespie, Co-Chair
The Honorable Ruth Samuelson, Co-Chair

FROM: Kari Barsness *KB*
Director of Legislative and Intergovernmental Affairs

SUBJECT: Permit Term Report

DATE: April 13, 2012

Pursuant to Section 60.(d) of Session Law 2011-398, The Department of Environment and Natural Resources shall review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule. The Department shall report its findings and recommendations to the Environmental Review Commission.

Please see the attached report to satisfy this reporting requirement.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at Kari.Barsness@ncdenr.gov.

cc: Robin Smith, Assistant Secretary for Environment
Sheila Holman, Director, Division of Air Quality
Braxton Davis, Director, Division of Coastal Management
Jim Simons, Director, Division of Land Resources
Dexter Matthews, Director, Division of Waste Management
Chuck Wakild, Director, Division of Water Quality
Tom Reeder, Director, Division of Water Resources
Kristin Walker, Fiscal Research Division
Lanier McRee, Fiscal Research Division
Claire Hester, Fiscal Research Division
Mariah Matheson, Research Division

NC Department of Environment and Natural Resources



**Permit Term Report
to the
Joint Regulatory Reform Committee
April 2012**

I. Introduction

Session Law 2011-398, the “Regulatory Reform Act of 2011”, changed the maximum length of permit terms for some water quality and air quality permits. The bill did not affect the terms for federal permits issued by the state under the Clean Air Act and Clean Water Act, which are set by federal statutes and rules. S.L. 2011-398, however, amended the state water quality and air quality permitting statutes to provide that non-federal permits should have a term “not to exceed” 8 years.¹ In addition to changing the maximum permit term for those permits, Section 60.(d) of the legislation directed DENR to “review the types of permits issued by the Department and the rule-making agencies under the Department and recommend whether the duration of any of the types of permits should be extended beyond their duration under current law or rule”. This report to the Environmental Review Commission is intended to meet that requirement.

This report provides information and recommendations on permit terms for a number of different permits and approvals issued by the divisions of Air Quality, Coastal Management, Land Resources, Waste Management, Water Quality and Water Resources.

II. Discussion of Permit Terms

Air Quality

Under the delegated authority of the EMC, the DAQ Air Permitting Section and Regional Offices issue three basic types of air quality permits: 1) combined Construction/Operating permits; 2) Notice of Intent to Construct permits; and 3) Transportation permits.

Construction/operating permits apply to new facilities as well as existing facilities that are undergoing an expansion or modification. These permits comprise the bulk of DAQ’s permit workload. If a facility submits a complete permit renewal application then that facility may continue to operate under the existing construction/operating permit until such time the DAQ makes a decision on the permit renewal application. The **Notice of Intent to Construct permit** is a non-renewable permit that covers development activities that may be undertaken prior to securing an operating permit for an air emissions source (such as site preparation). The **Transportation permit** is also a construction only permit that involves the construction of airports, parking lots, decks, garages, etc.

Except for Transportation permits, each of these permitted facilities is classified as either:

1) A “Title V” facility, which is a major source of air emissions that requires an operating permit under Title V of the federal Clean Air Act. Under federal law, a facility is considered a major source if it has the potential to emit at least 100 tons per year of a regulated air pollutant or 10 tons per year of any hazardous air pollutant; or has the potential to emit 25 tons per year of all hazardous air pollutants combined; or is subject to requirements established under the federal Clean Air Act).

¹ An earlier version of the bill set those permit terms at eight years; the language was amended prior to enactment to make eight years the maximum term rather than the specified term.

2) A “Synthetic Minor facility”, which has the potential to emit at Title V thresholds, but has taken an operating limit, as specified in the state permit conditions, to hold emissions below major source emissions levels; or

3) A “Small facility”, which has potential emissions that are clearly below major source emission thresholds.

Under the Federal Clean Air Act (CAA) Amendments of 1990, Title V permits are limited to a fixed term of five years. Therefore, Title V permits are not subject to the recommendations of this report. Both synthetic minor facility and small facility permits are also issued for five years. Renewal applications are processed free of charge.

Air Quality Permit Renewals

The main purpose of permit renewal is to ensure that the permit covers all emission sources for which a permit is required and to identify the applicable state and federal regulations that apply to each emission source. In recent years, new EPA rules have resulted in significant changes to applicability requirements, installation and operation of air pollution control equipment, and monitoring, recordkeeping and reporting requirements. The renewal process, currently required on a five-year cycle, is critical because of the pace of federal rulemaking and development of new federal guidance.

Many of the Small and Synthetic Minor facilities rely on DAQ to provide clarification of federal requirements and guidance on how to comply. When federal rules change, DAQ sends notification letters to all potentially affected permitted facilities when a new federal rule is finalized. The letters include basic rule information and compliance dates; DAQ then incorporates the new requirements into each facility’s air quality permit the next time the permit is renewed or modified. Most often, these new requirements are added to the permit through the permit renewal process. Extending the permitting cycle beyond five years would result in permits that are unrepresentative of all requirements that a facility must comply with between the time the permit was last issued and the time the new or modified rules took effect. This could increase the potential for violations at many Small and Synthetic minor facilities in North Carolina because the facilities are nevertheless responsible for complying with all current applicable requirements.

Lengthy permit terms can lead to compliance problems because permit terms and conditions can become obsolete or misdirected due to facility operational changes, amended laws and rules, updated policies and procedures, improved methods of monitoring and recordkeeping, and changes in emissions reporting requirements. To be consistent and avoid compliance problems, permit terms and conditions should be based on the most current regulatory/ technical guidance and up to date facility information. The permit renewal gives DAQ the opportunity to address these changes. Some examples of permit renewal activities include:

- Adding to the permit emissions sources that were omitted on the permit application, but later observed during compliance inspections by the DAQ.
- Removing emission sources that no longer exist at the facility from the permit.

- Maintaining a list of exempted sources that are not incorporated into the permit but are required to comply with and provide reference to applicable regulatory requirements.
- Incorporating into the permit new and amended state and federal regulations such as the Federal “New Source Performance Standards,” “National Emission Standards for Hazardous Air Pollutants for Area Sources,” and the State “Air Toxics” regulations, periodic monitoring guidance, etc.
- Verifying compliance with applicable state and federal regulations and updating permit conditions to make the conditions more clear and understandable.
- Updating facility emission inventories (to make sure the facility has the correct type of air quality permit and appropriate permit conditions).
- Recalculating source emissions to validate compliance due to updated emission factors or new source test data during the term of the permit.
- Reevaluating the reporting frequency based on the facility’s compliance history; this can result in reducing the frequency of reporting (typically from quarterly to annually) and reduces the workload on both the facility and the DAQ.
- Updating administrative information (such as name changes, ownership changes, address and contact information) to maintain an accurate database for purposes of fee invoicing, inventorying, ambient modeling, custom service mailings, etc.
- Ensuring consistency among permitted facilities.
- Evaluating compliance history.

After considering the potential impact of extending permit terms for Synthetic Minor and Small facility permits, the DAQ found no substantial benefit to the permitted facilities in extending the duration beyond the current five years. Since many of the benefits of the permit renewal process described above would be lost or diminished, DAQ believes that extending the permit duration would also reduce the overall effectiveness of the air quality program.

Coastal Management

Under G.S. 113-229, DENR has the authority to issue State Dredge and Fill permits for dredging and filling of estuarine waters, coastal wetlands and state-owned lakes. DENR’s Division of Coastal Management (DCM) exercises that permitting authority under rules adopted by the Coastal Resources Commission (CRC). The CRC has authority to issue Coastal Area Management Act (CAMA) major development permits under G.S. 113A-118; by rule, the CRC has delegated that permitting authority to DENR’s Division of Coastal Management.² The same statute allows the Coastal Resources Commission to delegate authority for issuance of CAMA minor development permits to local governments with approved CAMA minor development permitting programs. Most CAMA minor development permits are issued by coastal towns and counties (generally through the building inspector’s office).

² G.S. 113A-118(d) defines “major development”. Under the definition, a project may be classified as “major development” based on the need for another state or federal authorization (such as a Section 10 permit from the U.S. Army Corps of Engineers under the federal Rivers and Harbors Act of 1899); the size of the project; or the specific nature of the activity.

Under G.S. 113A-118.1, the Coastal Resources Commission also has the authority to -- by rule -- designate certain classes of major and minor development for coverage under a general permit. A general permit can be issued on site by the DCM permitting officer without the public notice and interagency review required for CAMA major development projects. The CRC has adopted rules authorizing general permits for sixteen categories of activities ranging from construction of piers and docks to replacement of bridges and culverts.³ In each case, the general permit covers the particular category of project within certain limitations on size and/or location. A project -- such as a dock -- that falls outside the scope of the general permit for that type of project can still be permitted through the normal CAMA major or minor development permitting process. Most projects covered by general permits would be considered major development under CAMA and the ability to get coverage under the general permit significantly reduces permit review time.

CAMA permits are essentially construction permits; although some CAMA permits have operating conditions, for the most part the permit exists to authorize construction or some other development activity (such as dredging of a navigation channel). As a result, the permit term defines the period within which development must be completed; a renewal is only required if development is not completed within the permit term. Once development has been completed, no further renewals are necessary. Pursuant to 15A NCAC 07J .0403, new dredge and fill permits, CAMA major development permits and CAMA minor development permits expire on December 31 of the third year following the year of permit issuance. In other words, the initial permits have a three-plus-year life span. After this time period, the rules allow for one two-year extension of the development period regardless of whether development has begun or not. As a result, a developer has five years to begin construction of a permitted project. Additional two-year extensions can be granted if substantial development authorized by the permit has begun and is continuing.

Under G.S. 113A-120, CAMA permit applications must be reviewed for consistency with the local land use plan. For this report, DCM consulted local government officials and local CAMA permit officers. Local officials expressed concern that permits with too long of a permit life can cause problems with respect to local zoning compliance. Since DCM does not receive a significant number of repeat permit extension requests, it also appears that most CAMA projects are being constructed within the originally permitted term or require at most a single 2-year extension.

Since CAMA permits are construction permits that do not require renewal once construction has been completed, DENR does not recommend extension of the permit term. An applicant has up to five years (based on the initial permit term plus one permit extension) to begin construction. After that, additional extensions are available as long as substantial construction is underway and continuing. The vast majority of projects permitted under CAMA and/or the Dredge and Fill Act are permitted under either a general permit or a minor development permit. Since those tend to be smaller and simpler projects, applicants typically complete those projects very quickly. The projects more likely to be affected by an extension of the permit term would be large

³ The CRC has also issued an emergency general permit to cover certain types of rebuilding activities after a natural disaster such as a hurricane. Unlike the other general permits, the emergency general permit must be activated on a case by case basis and is in effect only for a specific period of time following the natural disaster.

development projects and projects involving significant impacts to coastal waters. Allowing a longer time to begin construction would make it very difficult to track those more complex projects to ensure compliance with current development standards and permit conditions. It also significantly increases the likelihood that a project will be inconsistent with local planning and zoning ordinances when construction begins. As a result of local government concerns and the lack of demand for longer permit terms, DCM does not recommend extending the permit terms for the permits issued by the division.

Land Resources

The Division of Land Resources issues three types of approvals: mining permits, dam safety permits and sedimentation plan approvals. State law governs each of these approvals; these approvals do not directly relate to any federally delegated program. There is an indirect link between sedimentation plan approvals and federal construction stormwater permits, however. The Division of Water Quality has issued a general construction stormwater permit that meets federal Clean Water Act permitting requirements for stormwater runoff from construction activities. The general permit relies on implementation of an approved sedimentation control plan as a major component of compliance with the federal construction stormwater permit.

G.S. 74-50(d) provides that **mining permit** can be issued for a maximum of 10 years. The division does not recommending changing the permit duration for mining permits. There are a few of reasons for this recommendation: logistics in tracking the mining site over time, the potential for a changing regulatory environment, and changes in the development around the permitted mine over time suggest that a ten-year mining permit is appropriate.

G.S. 143-215.28(d) provides that dam construction shall commence within one year after a **dam safety permit** has been issued, but an extension can be granted. This one-year period can be extended to two years. The dam safety permit is similar to a CAMA permit in that it is primarily a construction permit. The division does not recommend changing the duration for a dam construction permit due to the fact that development may occur downstream that would cause the hazard classification of the dam to change. The change in classification would potentially require an upgrade of construction standards. It is far more economical for a dam owner to upgrade the dam design before construction, than to upgrade the dam after it is already constructed.

Under 15A NCAC 04B.0129, an approval of an **erosion and sedimentation control plan** expires after three years if no land disturbing activity has been undertaken. As noted above, the sedimentation plan approval also serves to meet many of the requirements set out in the construction stormwater general permit issued by DWQ to satisfy federal stormwater control standards under the Clean Water Act. The construction stormwater general permit itself, as a federal NPDES permit, has a maximum permit term of five years.

The division also does not recommend changing the duration for sediment and erosion plans. Early on, sedimentation plan approvals had no expiration period. As a result, the Division of Land Resources had accumulated file material on large numbers of unbuilt projects. To address this problem, the Sedimentation Control Commission adopted a rule in 1995 to make plan approvals valid for three years. The three-year term is long enough to begin a construction

project. If a construction project does not start within three years after approval, it is likely that the project is either not going to go forward, or circumstances are such that the erosion and sedimentation plan should be reviewed again before the delayed project begins.

Waste Management

The Division of Waste Management issues (DWM) permits for hazardous waste facilities, solid waste disposal (such as septage management and landfill permits) and petroleum underground storage tank (UST) operating permits.

G.S. 130A-295.1(c) limits permits for **commercial hazardous waste facilities** to 5 years. An application for renewal of a commercial hazardous waste permit must be submitted at least one year before the permit expires unless the Department approves a shorter period of time. DWM does not recommend changing the 5-year permit term for commercial hazardous waste facilities. Before 2006, those permits had a maximum 10-year term similar to the other categories of hazardous waste permits listed above. In 2006, there was an explosion and fire at the EQ commercial hazardous waste facility in Apex that required temporary evacuation of a number of Apex residents. DWM's investigation of conditions at the EQ facility leading up to the fire identified a number of compliance problems. In response to the EQ event, the General Assembly amended G.S. 130A-295.1(c) in 2007 to shorten the permit term for commercial hazardous waste facilities to provide more frequent review of those operations.

DWM also issues **other types of hazardous waste permits**, including: operating permits for treatment/storage/disposal of hazardous waste; permits for post-closure care for land disposal units; and so-called "HSWA only" permits for corrective action under the federal Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616). Consistent with federal rules, each of those hazardous waste permits has a term not to exceed 10 years.⁴

G.S. 130A-291.1(e2) requires **septage management firms** to have an annual operating permit and pay an annual fee. Annual review of septage management operations allows DWM to address changes in the operation of septage management firms that often occur over the course of a year. One example would be addition or deletion of approved waste disposal locations. Septage management firms may also add or replace pump trucks in the course of the year and the individual trucks must be registered. In addition, the permit renewal verifies compliance with annual training required by state law. The permit process is not complex and annual fees support the regulatory program. The division does not recommend changes to the septage management permit term.

Permit terms for other **solid waste facilities** are set out in rules adopted by the Commission for Public Health. These permits cover a number of different types of solid waste facilities: municipal solid waste landfills; construction and demolition landfills; land clearing and inert debris landfills; industrial landfills; transfer stations; incinerators; medical waste treatment facilities; material recovery facilities; household hazardous waste facilities; compost facilities; treatment and processing facilities; septage land application sites; and septage detention and

⁴ 40 Code of Federal Regulations § 270.50; adopted in 15A NCAC 13A .0113(h)

treatment facilities. Generally, the rules prescribe a five-year term for solid waste facility permits. DWM does not recommend changes to the permit terms for solid waste facilities. The current permit terms allow for the review of a facility's operation at an interval that matches advancements in applicable technology and industry standards. The division is also able to provide a comprehensive review of the facility's operational plan to ensure that it is still accurate.

After the initial construction phase, these become operating permits and the permit fees support the permitting and compliance activities necessary to provide adequate regulatory oversight. If permit terms were lengthened, it would be important to determine whether the fee schedule would also need to be changed to ensure that permittees continue to provide adequate support for necessary regulatory activities.

Under G.S. 143-215.94U, an operator of a regulated **petroleum underground storage tank (UST)** must have an operating permit and those permits are renewed annually. Under the law, DENR can only renew a UST operating permit if the tank owner/operator is in compliance with a number of statutory requirements. One of those requirements is that the owner must pay annual fees into the State UST Trust Fund to meet financial assurance requirements established under federal law. Presently, those fees are \$420 per tank per year. Since the permit term is directly linked to maintaining compliance with federal requirements, DWM does not recommend changing the permit duration for UST operating permits.

Water Quality

The North Carolina Division of Water Quality (DWQ) in DENR is the agency responsible for statewide regulatory programs in surface water and groundwater protection. Under delegation from the Environmental Management Commission, DWQ issues several types of permits falling into two broad categories: 1. permits that allow the discharge of wastewater into waters of the state (National Pollutant Elimination Discharge System (NPDES) permit); and 2. non-discharge permits. Many types of permits are issued within these two broad categories.

A working group within DWQ reviewed all federal and state requirements related to permit lengths and identified 5 types of permits that could reasonably be changed from a term of five years to a term not to exceed eight years, consistent with S.L. 2011-398.

DWQ Permit Types That May Have a Maximum Eight-Year Permit Length

Under Section 60(c) of Session Law 2011-398, a permit under the authority of G.S. 143-215.1 can now be renewed or issued for either a maximum of five years or eight years depending on the permit types. Table 1 lists the permit types DWQ is responsible for that may now have a term not to exceed eight years. The table also shows the estimated number of permits by type, the Administrative Code for each permitting program, the maximum permit length established by rule, and the specific administrative code or rule reference that limits the permit term. In each case, it would be necessary to amend current administrative rules prior to issuing permits for lengths up to eight years except for high density stormwater permits. Further discussion of each

permit type, including information on the importance of the permitting and historical significance of some of the programs, follows.

Table 1. DWQ Permits That May Have Maximum Duration of Eight Years - SL 2011-398

Permit Type	Average Number of Permits per Year*	Administrative Code for Permitting Program	Current Administrative Code Permit Length Limitation	Rules Requiring Modification
Waste Not Discharged to Surface Waters	1600	15A NCAC 02T	Not to exceed 5 years	02T .0108(e) and 02T .0111(e)
Reclaimed water	110	15A NCAC 02U	Not to exceed 5 years	02T .0108**
Injection Wells	370	15A NCAC 02C .0200	Not to exceed 5 years	02C .0211 (j)
State Stormwater – High Density Stormwater	300	15A NCAC 02H .1000, SL 2006-246, SL 2008-211	Not to exceed 10 years for high density permits	2H .1003(h)(2)
Isolated and Other non-404 Jurisdictional Wetlands and Waters (IWP)	15	15A NCAC 02H .1300	Period of five years with extensions not to exceed one additional year	15A NCAC 02H .1301(c)

* Includes active, new, and renewals. Estimations were done using recent fiscal analyses for reclaimed water and injection wells. For all others the last three to five years were used.

**02U .0108 – the reclaimed water rules reference 02T .0108; therefore, only 02T .0108 needs to be modified.

Waste Not Discharged to Surface Waters (per G.S. 143-215.1) includes permits for systems that have developed wastewater and wastewater residuals management systems that do not discharge to surface waters. These permit types include sewer extensions, system-wide collection systems, wastewater irrigation systems, single family residence wastewater irrigation systems, high rate infiltration systems, closed loop recycle systems, residuals management, coal combustion products management, animal waste management systems, soil remediation, and groundwater remediation systems.

Wastewater management systems that apply the treated wastes to the ground surface are commonly referred to as **non-discharge systems** and are encouraged as an alternative to surface water discharge systems requiring a NPDES permit. Non-discharge systems continue to increase in complexity as developers strive to minimize land requirements for disposal systems and can range from small single family residence systems to large municipal systems capable of treating millions of gallons of wastewater per day.

Statutes and rules that require permits for **animal feeding operations** were established in 1995 as a result of concerns about waste discharges from these facilities. These rules were updated in 2006 to include manure haulers.

On July 20, 1999, House Bill (HB) 1160 Section 11.2 of Part XI, directed the Environment Management Commission (EMC) to develop and implement a permit program for **municipal and domestic wastewater collection systems** on a system-wide basis. The system-wide collection system-permitting program establishes a permitting program that focuses on the collection system as a whole rather than individual sewer line extensions. The goal of the system-wide collection system permitting program is to permit older systems that have never been permitted; ensure an adequate operation and maintenance program; and examine the need for rehabilitation and repair of sewers such that sanitary sewer overflows (SSOs) are greatly reduced. Many older collection systems were not constructed to the needed standards to prevent overflows. Causes of SSOs can include inadequate capacity, inflow and infiltration (I/I), blockages due to grease or root intrusion, and mechanical failures. Sanitary sewer overflows are a significant concern as the raw sewage can significantly degrade the environment and increase public health risks. Implementation of the program is resulting in needed reinvestment into collection system infrastructures and improved operation and maintenance programs.

Reclaimed water rules were recently updated using a stakeholder process and new rules were adopted as 15A NCAC 02U in July of 2011. The permitting program ensures that reclaimed water providers have adequate controls in place to provide a highly treated wastewater that is safe for beneficial reuse and protects human health.

Injection well construction and permit requirements are mandated by the NC Well Construction Act (G.S. 87, Article 7). G.S. 143-124.2 prohibits the disposal of waste by injection; that provision responded to a failed waste injection facility located in Wilmington that operated in the late 1960s through early 1970s. Permittable injection wells include wells related to groundwater remediation, geothermal heating and cooling, and aquifer storage and recovery. Other types of injection wells are allowed, but rarely or never permitted; those would include wells for subsidence control, preventing saline water intrusion into fresh water, aquifer recharge, and evaluating experimental technologies.

Extending the term period from five years to eight years for non-discharge, reclaimed water, and injection well permits would have little effect from a regulatory standpoint. It is reasonable to assume that permit holders would see some decrease in costs due to savings in preparing a permit renewal application every eight years as opposed to every five. (There would be no savings for permit holders in regards to permit fees, since permit fees would continue to be collected annually and there are no additional fees associated with renewals.)

State Stormwater Permits – These permits are issued for new development and redevelopment activities in designated areas across the state: coastal areas; areas adjacent to outstanding resource waters and high quality waters; and areas adjacent to municipalities required to have Phase II stormwater permits. The permits are designed to control stormwater pollution from the addition of impervious area in the developing areas. Low density stormwater permits last for the lifetime of the project without requiring permit renewal.

High density projects that require engineered stormwater control structures receive high density stormwater permits that must be renewed every 10 years. Under the “not to exceed” language in the session law, these 10 year permit terms must be shortened to a term of eight years. These projects do not have annual fees, but do require application fees for new projects and permit renewals. Permit holders will have a slight increase in costs associated with renewal applications every eight years as opposed to the current 10 years. Since most water quality permits had 5-year terms before the enactment of Senate Bill 781, it is likely that the General Assembly did not anticipate that the new language would have the effect of shortening the term of these stormwater permits.

Isolated and Other non-404 Jurisdictional⁵ Wetlands and Waters (IWP) permits are required for any project impacting wetlands or waters not covered under Section 404 of the federal Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. When the state issues an IWP, this certifies that a given project will not degrade waters of the state. The rules, 15A NCAC 02H .1301(c) and .1304(e), require that individual permits and certificates of coverage for general permits be issued for a period of five years and allow for extensions not to exceed one additional year provided that the construction has commenced or is under contract to commence.

Typically projects requiring an IWP also have a Section 404 Clean Water Act permit from the U.S. Army Corps of Engineers (404 Permit) and a corresponding Section 401 Water Quality Certification from the Division of Water Quality (401 Certification). Currently the application form is the same for the IWP, the 404 permit and the 401 WQC and all approvals are issued for a maximum of five years. Under federal law, the 404 Permit cannot be issued for a term of more than five years; since the 401 Certification relates to the 404 Permit, it is also limited to a term of no more than five years.

It is not clear how much developers would benefit from a decision to extend the IWP permit term from five years to eight years -- particularly for projects that also require a 404 Permit and a 401 Certification. An eight-year isolated wetlands permit term would allow a developer more time to complete those activities before needing to reapply. For projects involving a state isolated wetlands permit and a 404 Permit/401 Certification, however, the developer would still need to reapply for the federal permit and water quality certification within five years. Disconnecting the different project approvals from each other in the reapplication process may result in confusion for both the developer and the regulatory agencies. For example, a change in the 404 Permit or 401 Certification in the reapplication process may indirectly affect activities approved under the IWP. In that case, the applicant would need to request modification of the IWP anyway. DWQ issues a very small number of IWP permits each year – approximately 15 – and most are associated with a larger project that requires a 404 Permit/401 Certification. On balance, DWQ does not believe extending the term of the IWP from the current five years to eight years would benefit applicants. For the reasons cited above, DWQ does not recommend extending the term of the isolated wetlands permits beyond five years.

⁵ Jurisdictional wetlands and waters are those wetlands and waters that are regulated by the US Army Corp of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899.

DWQ Permit Types with a Maximum 5-Year Permit Length per Federal Requirements

Under the Sections 402 and 404 of the federal Clean Water Act, permit terms for NPDES and Dredge & Fill permits may not exceed five years. Under Section 402 (NPDES), permits are required for any project involving the construction, alteration, and/or operation of any sewer system, treatment works, or disposal system and certain stormwater runoff which would result in a discharge into surface waters or into a publicly owned treatment works. DWQ has delegated permitting authority to issue these permits in North Carolina and issues individual and general permit coverage for various activities. Federal regulations require that these permits are issued for a time period not to exceed five years.

DWQ Certifications, Authorizations & Variances - There are a variety of activities conducted by DWQ to implement federal and state requirements that are not permitting, but are sometimes assumed by the public to involve permits. Those activities include water quality certifications under Section 401 of the Clean Water Act and authorizations or variances required for impacts to riparian buffers.

401 Water Quality Certifications (WQC) – Under Section 401 of the federal Clean Water Act, an applicant for a federal permit or license that may result in a discharge to waters of the U.S. must provide a certification that the activity will be consistent with state water quality standards. When DWQ issues a Section 401 water quality certification, it certifies that the project will not degrade waters of the state. The certification expires when the corresponding federal permit or license expires, thus the lifespan of the certification is determined by the federal permit or license term. The authority to issue these certifications does not come from the water quality permitting statute (G.S. 143-215.1); statutory authorities include G.S. 143-215.3(a)(1), 143-215.3(c) and 143B-282(1)(u).

Buffer Authorizations and Variances – These authorizations and variances are required as part of the Neuse, Tar-Pamlico and Catawba River Basins and Randleman Lake, Goose Creek and Jordan Lake Watersheds Riparian Buffer Rules. Each buffer rule includes a table of uses that lists activities allowed in the buffer. “Exempt” uses are allowed in the riparian buffer without approval from DWQ. “(Potentially) Allowable” require a buffer authorization from DWQ. Uses identified as “(Potentially) Allowable with mitigation” uses may occur in the buffer only after a buffer authorization is issued by DWQ that includes a mitigation strategy. Prohibited uses are not allowed in the buffer unless a variance is granted by DWQ or the Environmental Management Commission (EMC). The authority to issue these authorizations and variances do not come from the permitting statutes (G.S. 143-215.1), so these authorizations are not subject to Section 60(c) of Session Law 2011-398 (S781). The statutory authorities include G.S. 143-214.1, 143-214.5, 143-214.7, 143-215.3(a)(1), 143-215.6A, 143-215.6B, 143-215.6C, 143-215.8A, 143-215.8B, 143B-282(c), 143B-282(d), SL 1995-572, SL 1999-329, SB 824-2003, SL 2005-190, and SL 2006-259.

After reviewing current state and federal regulations, DWQ finds that:

- All non-discharge, reclaimed water, injection well, high density stormwater, and isolated and other non-jurisdictional wetlands and waters (IWP) permits could be issued for up to eight years (Table 1).

- Modification of the 15A NCAC 02T rules (Waste Not Discharged to Surface Waters) and the 15A NCAC 02C .0200 rules (Injection Wells) to allow permits to be issued for up to eight years may result in small cost savings to permit holders due to development of fewer renewal packages.
- There is no fee for renewal of the permits issued under either the 15A NCAC 02T rules or the 15A NCAC 02C rules; the only savings to the permit holder would be costs associated with preparing a renewal application.
- High density stormwater permits under the state stormwater program are currently issued for 10 years. A slight increase in costs to those permit holders may result due to more frequent renewals. As of August 2011 per the session law, high density stormwater permits are being issued for the maximum allowable time period of eight years.
- There are only a small number of IWP permits (approximately 15) issued each year. Most of those permits are for projects that also require a Section 404 Permit and a Section 401 Water Quality Certification that are limited by federal law to a term of five years or less. Keeping the IWP permit term consistent with the federal permit term will avoid conflicts that may occur if those approvals become disconnected from each other in the reapplication process.
- All other permits issued for wastewater and stormwater discharged to surface waters and pretreatment facilities must be issued at “fixed terms not exceeding five years” per the Clean Water Act under Sections 402: National Pollutant Discharge Elimination System (NPDES) and 404: Permits for Dredged or Fill Material.

Based on this review, DWQ will request that the Environmental Management Commission conduct rule-making to allow issuance of the permits under “Waste Not Discharged to Surface Waters” in 15A NCAC 02T .0108(e) and .0111(e) for a period of eight years. Modification to these rules will impact all non-discharge permits including reclaimed water permits and permits for injection wells.

Water Resources

DENR also has authority to implement requirements of the federal Safe Drinking Water Act, 42 U.S.C.A. Chapter 6A, in North Carolina. The Safe Drinking Water Act sets standards for public water systems. Although the Safe Drinking Water Act does not have a specific permit requirement, the state must demonstrate an ability to implement and enforce federal statutes and rules in order to maintain its delegated authority. Federal rules set out standards for operation and maintenance of public water systems including: water treatment standards; monitoring and record-keeping requirements; and use of a certified water system operator. The North Carolina Drinking Water Act (§ 130A Article 10) and federal rules adopted by reference in the Rules Governing Public Water Systems provide the authority to implement federal Safe Drinking Water Act requirements in North Carolina.

The Public Water Supply Section in the Division of Water Resources (DWR) issues permits for public water systems under the N.C. Drinking Water Act. Under G.S. 130A-328, two categories of public water systems require an annual operating permit: 1. community water systems (a category that covers water systems serving at least 25 people *or* 15 or more service connections) and non-transient, non-community water systems (a category that largely covers water systems

that serve a single institution such as a school, prison or hospital). By law, those operating permits are issued for the calendar year (Jan.1-Dec. 31) and require annual renewal. The process for renewing an operating permit is simple. The Public Water Supply Section sends an annual application that contains information including the system owner and certified operator contact information, service population, and amount of annual fee that is due. The owner returns the application with any corrected information and payment for the annual fee. This annual process to capture current owner and certified operator contact information and fees is critical to program implementation. DENR does not recommend changing the term of the annual operating permit.

The operating permit is the only true permit issued by the drinking water program; other authorizations are in the form of plan approvals and authorizations to construct drinking water infrastructure. An “Authorization to Construct” is valid for 2 years. If construction is to be delayed beyond 2 years, the DWR issues an extension if the project owner submits an engineer’s statement to document that the engineering plans and specifications are still valid (i.e., satisfy current requirements). DENR does not recommend a change to the default term for an Authorization to Construct.

DWR also issues permits for water withdrawals in the Central Coastal Plain Capacity Use Area. In that 15-county area, withdrawals in excess of 100,000 gallons per day from the Upper Cape Fear and Black Creek aquifers require a permit from the department under G.S. 143-215.15. A capacity use area withdrawal permit cannot be issued for a term that is longer than the longest of the following time periods: 10 years *or* the length of time the capacity use area designation is in effect *or* the period necessary for the permit holder to amortize the infrastructure associated with the water withdrawal or water use. (G.S. 143-215.16.) A withdrawal permit can be renewed. Given the length of the permit term already allowed under state law, DENR does not recommend a change.

III. Findings and Recommendations

DENR programs issue a wide range of permits under both state and federal law. Some permits authorize one-time construction or development activity and require no renewal once construction is substantially complete. Examples would include CAMA permits for coastal development, erosion and sedimentation plan approvals, and isolated wetlands permits. Other permits are operating permits used largely to ensure consistent compliance with state and federal requirements. Examples would be permits for air emissions sources; public water systems; and wastewater treatment plants. Operating permits must be renewed on a regular basis; renewal periods vary depending on the type of permit.

A number of water quality permits could be increased from the current five-year term to an eight year term without any significant impact on compliance or program effectiveness. Those include all non-discharge wastewater permits, reclaimed water permits and injection well permits. The Division of Water Quality does not recommend lengthening the term of an isolated wetlands permit because those permits are often linked to federal approvals that have five-year terms established under federal statutes and rules.

DENR also notes that the final language of S.L. 2011-398 requires DENR to shorten the term of

high density stormwater permits. The bill language indicates that state permits issued under the water quality permitting statute should be issued for a term “not to exceed” eight years. High density stormwater permits are currently issued for a term of 10 years.

IV. Conclusions

DENR recommends lengthening the term of several categories of water quality permits. Permits for non-discharge wastewater permits, injection well permits and reclaimed water permits can be extended from the existing 5 years to the statutory maximum of 8 years without compromising compliance.

The Environmental Management Commission will also need to undertake rulemaking to change the 10-year term for high density stormwater projects to eight years as required under S.L. 2011-398.

DENR believes that other existing permit terms should be retained. In a number of cases, lengthening the term of construction permits could result in the project being inconsistent with other federal, state or local requirements at the time of construction. Similar problems can arise under some of the operating permits issued by the department. Air quality permit renewals, in particular are a key tool in maintaining compliance.