

401/404 Permitting

Charlotte-Mecklenburg Storm Water Services (CMSWS) is committed to enhancing local water quality by complying with the permitting requirements of Sections 401 and 404 of the Clean Water Act (CWA).

Sections 401 and 404 regulate impacts to jurisdictional streams and wetlands by providing a process to ensure that damage to streams and wetlands is limited to the minimum amount necessary to complete a project.

While many projects undertaken by CMSWS are designed to enhance and improve water quality, there are projects when unavoidable impacts to jurisdictional waters are necessary to complete the improvements.

Section 404

Jurisdictional streams are regulated by the United States Army Corps of Engineers (USACE) and are subject to the rules of the Section 404 of the CWA. Minor impacts to regulated waters are typically permitted under the Nationwide Permit system, which requires a Pre-construction Notification prior to the impacts taking place.

The USACE approves or denies each Pre-construction Notification based on the purpose and need for the project and overall impacts. If approved, the USACE issues a General Permit Verification for the impacts specified in the permit. Once a complete application is received, the USACE has 45 days to issue or deny the General Permit Verification.

CMSWS prepares 404 permit applications for two different types of projects:

1. Projects necessary to reduce flooding, increase system capacity, or eliminate an erosion problem. Examples include:
 - maintenance of existing stormwater infrastructure
 - new pipe in a channel to eliminate flooding or erosion,
 - pipe extensions, and
 - rip rap placement for energy dissipation and erosion prevention.
2. Projects necessary to construct a water quality improvement project. Examples include a pond rehabilitation or stream restoration project.

Applicants are required to avoid and minimize impacts to the maximum extent practicable and provide adequate information on impacts to endangered/threatened species. The following excerpt from Section 404(b)(2) of the Clean Water Act describes avoidance and minimization:

“No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the

aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”

Section 401

Under Section 401 of CWA, certain impacts also require formal notification to the North Carolina Department of Environmental Quality which places the project under review of the Division of Water Resources (DWR) 401/Wetlands Unit. The DWR reviews the request and approves or denies a Water Quality Certification for the project. Once a complete application is received, the DWR has 60 days to issue or deny the Water Quality Certification.

Failure to notify the USACE or DWR for impacts could constitute a violation, which, under the CWA, carries fines up to \$50,000 per day or imprisonment.

More information on permitting and the rules of the Clean Water Act can be found at the U.S. Army Corps of Engineers and North Carolina Department of Environmental Quality websites or [Section 404 of the Clean Water Act](#).