

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL 472
PROPOSED COMMITTEE SUBSTITUTE S472-PCS45373-RI-3

Short Title: Amend 401 Certification Process.

(Public)

Sponsors:

Referred to:

March 25, 2025

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE PROCESS FOR 401 WATER QUALITY
CERTIFICATIONS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
QUALITY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Definitions. – For purposes of this section and its implementation, "Water Quality Certification Rules" means 15A NCAC 02H .0500 (Water Quality Certification Rules).

SECTION 1.(b) Water Quality Certification Rules. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Water Quality Certification Rules as provided in subsection (c) of this section.

SECTION 1.(c) Implementation. – Notwithstanding 15A NCAC 02H .0502(a)(10), the Department shall begin review of permit applications immediately upon receipt. The Department shall inform an applicant of the requisite fee within five business days after receipt of the application. The 401 Water Quality Certification shall not be issued until the applicant has paid the requisite fee.

SECTION 1.(d) Additional Rulemaking Authority. – The Commission shall adopt rules to amend the Water Quality Certification Rules consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 1.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

SECTION 2. The Department of Environmental Quality shall request that the United States Army Corps of Engineers approve a modification to the Programmatic Agreement executed between the agencies to reflect the review and decision time lines for water quality certifications set forth in 15A NCAC 02H .0507.

SECTION 3. The Department of Environmental Quality shall adopt rules to establish an expedited review process for water quality certifications required for projects that have received a Nationwide Permit issued by the United States Army Corps of Engineers. The expedited process shall require the Department to review and approve or deny an application for a water quality certification within five business days of receipt of the application and fee. Failure



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1 to take action within five business days shall result in a waiver of the certification requirement
2 by the Director.

3 **SECTION 4.(a)** No later than August 1, 2025, the Department of Environmental
4 Quality shall prepare and submit to the United States Environmental Protection Agency
5 (USEPA) for approval by that agency the proposed changes set forth in Section 3 of this act.

6 **SECTION 4.(b)** Section 3 of this act become effective on the later of the following
7 dates:

8 (1) October 1, 2025.

9 (2) The first day of a month that is 60 days after the Secretary of the Department
10 of Environmental Quality certifies to the Revisor of Statutes that USEPA has
11 approved the proposed changes set forth in Section 3 of this act, as required
12 by subsection (a) of this section. The Secretary shall provide this notice along
13 with the effective date of this act on its website.

14 **SECTION 4.(c)** On the date that USEPA notifies the Department of Environmental
15 Quality that it has approved the proposed changes set forth in Section 3 of this act, the Department
16 of Environmental Quality shall request that the United States Army Corps of Engineers approve
17 a modification to the Programmatic Agreement executed between the agencies to reflect the
18 review and decision time lines for water quality certifications set forth in Section 3 of this act.

19 **SECTION 4.(d)** The Department of Environmental Quality shall report to the Joint
20 Legislative Commission on Governmental Operations on the status of their activities pursuant to
21 subsection (c) of this section quarterly, beginning September 1, 2025, until the date this act
22 becomes law.

23 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
24 law.