



US Army Corps
of Engineers
Wilmington District

NC Ecosystem Enhancement Program (Regulatory)

- **Provide compensatory mitigation for permits issued to NCDOT and general public**
- **Corps is working with state to ensure sufficient mitigation sites are available to meet NCDOT impacts through 2015**

CONGRESSIONAL DISTRICT: NC – Statewide

DATE: 6 February 2014

1. **PURPOSE:**

To provide the current status of the North Carolina Ecosystem Enhancement Program (NCEEP).

2. **BACKGROUND:**

a. The NCEEP is a multi-agency strategy and program designed to systematically provide compensatory mitigation required under Sections 404 and 401 of the Federal Clean Water Act permits issued to the NC Department of Transportation (NCDOT) and the general public. The NC Department of Environment and Natural Resources (NCDENR) is the primary implementation agency and the Corps continues its responsibility relative to all permit conditions and program requirements.

b. For projects other than those conducted by the NCDOT, the NCEEP operates as an In-Lieu Fee (ILF) program that provides compensatory mitigation to the private sector.

c. For projects conducted by NCDOT, the NCEEP operates on a schedule where they are working to provide the mitigation in advance of the impacts associated with 404 permits. This provision of providing the mitigation in advance of impacts is one of the main benefits of the program.

d. In July 2008, the Federal Mitigation Rule (Rule) was issued jointly by the United States Environmental Protection Agency (USEPA) and the Corps. A new operating agreement, consistent with the new rule, was signed by the Corps on July 28, 2010.

3. **CURRENT STATUS:**

a. Members of the mitigation banking industry in North Carolina have been critical of NCEEP because the program tends to reduce the demand for private, for-profit mitigation banks in the state. Nevertheless, mitigation providers (including bankers) still profit from the program because NCEEP typically develops its sites using a “full-delivery” process that awards contracts to outside parties to develop mitigation sites. The following are highlights

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of recent public controversy over the program:

- i. Two state laws, Senate Bill 755 and Senate Bill 425, were promoted by mitigation banking interests to encourage development of private mitigation banks. These bills require that mitigation associated with state permits (Section 401) are satisfied first by mitigation banks, and only allow payment to NCEEP in the event that a mitigation bank does not have credits available, or there are no mitigation banks within an 8-digit hydrologic unit code (HUC). This situation sets up a potential conflict as state law has no bearing on our requirements under the Clean Water Act and we may have to make a decision on mitigation that is contrary to state law.
 - ii. A Legislative Review Committee (LRC) was convened in 2012 to review a number of issues associated with compensatory wetland and stream mitigation processes in North Carolina, including a number of issues that would affect NCEEP. The issues included service area, credit procurement, and the possibility of the state of North Carolina taking over the 404 wetland and stream permitting program. The 2012 LRC met two times, but no legislation resulted. The LRC review has been reinitiated by the current North Carolina General Assembly, but no meetings have been held yet.
- b. As of the beginning of 2014, the Corps has closed 144 stream and/or wetland projects. The Corps is still working with NCEEP, NCDOT and the Stewardship Program to resolve several issues related to the funding of long-term stewardship for these projects.
- c. NCEEP leadership has recently raised several concerns about how the program is treated in comparison with other mitigation sponsors and brought these concerns to the attention of the Corps. We are in the process of arranging a summit with NCEEP leadership to discuss these issues; however no date has been set at this time. NC Interagency Review Team members will likely participate in this meeting as well. A separate meeting with other mitigation sponsors in the state who may be affected by these issues may be arranged as well.