



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: 8 April 2013

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 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 LRC met two times, on 23 October 2012 and 20 December 2012. No decisions have been finalized and there are indications that no legislative action will be taken based on the results of the committee meetings
- b. NCEEP is in the process of developing advance mitigation in anticipation of projected NCDOT impacts, and by July 2013, must have enough mitigation constructed to handle all of NCDOTs impacts projected to be permitted by the year 2015. As a result, the Corps is working with NCEEP to track the progress of mitigation development to ensure these goals can be met.
- c. As of the beginning of 2011, NCEEP had completed monitoring on 110 stream and/or wetland projects and the Corps is currently working with NCEEP to transfer all closed projects to their final long-term steward. Several issues have come up during this process, including arranging commitments from NCDOT to fund the long-term stewardship of many of these sites. The Corps is in the process of working with NCEEP, NCDOT, and the Stewardship Program to resolve these issues.