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Section 401 Clean Water Act: North Carolina Department of Environmental Quality Water Quality Certification for Toll Highway Challenged

02/26/2019

The Southern Environmental Law Center ("SELC") filed a Petition for a Contested Case Hearing ("Petition") in the North Carolina Office of Administrative Hearings addressing a Clean Water Act Section 401 Water Quality Certification ("WQC") that was issued by the North Carolina Department of Environmental Quality to the North Carolina Department of Transportation ("DOT").

The Petition was filed by SELC on behalf of:

- Sounds Rivers
- Clean Air Carolina
- Center for Biological Diversity

Section 401 of the Clean Water Act prohibits federal agencies from issuing permits or licenses that result in exceedance of water quality standards, or other applicable authorities, of a state. This provision of the Clean Water Act requires an applicant for a federal license or permit to provide a certification that any discharges from the facility will be comply with applicable state water quality standards. If not provided, the federal permit or license may not be granted. Further, states can impose certain conditions upon federal permits or licenses as a prerequisite to granting the permit or license.

The toll highway is proposed for a location south of Raleigh, North Carolina.

SELC's Petition argues that the North Carolina Department of Environmental Quality failed to:

- demonstrate a lack of practical alternatives to the Complete 540 Toll Highway;
- demonstrate that the project, which will impact wetlands critical to the survival of rare or endangered species, is required to meet a demonstrated public need;
- evaluate the full scope of the project specifically to ensure that the applicant has:
- minimized stream and wetland impacts
- demonstrated that the project will not degrade groundwaters and surface waters
- demonstrated that the project will not result in cumulative impacts that will cause a violation of water quality standards, including but not limited to preservation of existing uses in Class C waters such as habitat for endangered species, and
- provided for the replacement of existing uses through mitigation;
- require stormwater management plans for two-thirds of the project
- evaluate the project consistent with the requirements of North Carolina law.

A copy of the Petition can be found [here](#).