

214 Federal Environmental Laws

Federal laws require government approval prior to beginning any work in or over “Waters of the United States” that affects the course, location, condition, or capacity of such waters, or prior to discharging dredged or fill material into U.S. waters. Regulatory programs that implement these laws are administered through permits issued by the U.S. Army Corps of Engineers (USACE), which shares responsibility with the United States Environmental Protection Agency (U.S. EPA), under the authority of the Clean Water Act and the Rivers and Harbors Act.

The Corps’ regulatory process involves two (2) types of permits:

- Section 404 of the Clean Water Act. For more information see <http://www.epa.gov/cwa-404/section-404-permit-program>; and
- Section 10 of the Rivers and Harbors Act of 1899. For more information see <https://www.epa.gov/cwa-404/section-10-rivers-and-harbors-appropriation-act-1899>

For additional requirements see the following links:

- http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/app_d_traditional_navigable_waters.pdf.
- http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/cwa_guide/jd_guidebook_051207final.pdf.
- <http://www.epw.senate.gov/rivers.pdf>.

Wetlands:

Wetlands located on the property require proper identification and delineation of their boundaries. This will determine the extent of the mitigation and/or permitting process.

Wetlands are transitional areas between upland and deep-water aquatic systems. Wetlands come in all shapes and sizes and go by names such as marshes, swamps, scrub-shrubs, bottomlands, oxbows, or sloughs. The regulatory definition of wetlands is “land that has a predominance of hydric soils, and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions” [40 CFR 230.3(t)]. Wetlands are not limited to those shown on National Wetland Inventory mapping. All aquatic features within a project site require confirmation of their jurisdictional status by the Army Corps of Engineers. A qualified professional Geologist or Engineer should examine the site for wetlands, delineate wetland boundaries, and prepare a Jurisdictional Determination for concurrence by the USACE.

All wetlands have three things in common:

- One indicator used to identify a wetlands is a soil that is at least periodically saturated or ponded and exhibits certain water-loving plants.
- Two other indicators must be present to identify wetlands:
 - Hydric soil and
 - Hydrology.

The U.S. Army Corps of Engineers is responsible for jurisdictional wetland determinations in Kentucky. Section 404 of the Clean Water Act requires that applicants who propose projects that will result in the loss of jurisdictional wetlands must demonstrate that the project 1) avoids impact to wetlands where practical, 2) minimizes the impacts to those wetlands that cannot be avoided, and 3) mitigates for the loss of any jurisdictional wetlands.