

215 State Environmental Laws

215.1 Section 401 Permit - Kentucky Water Quality Certification Program: Chapter 151 of the Kentucky Revised Statutes requires approval from the Kentucky Division of Water (KDOW) prior to any construction or other activity in or along a stream that could in any way obstruct flood flows or adversely impact water quality. Section 401 is an oversight of the federal Section 404 program. In order for a Section 404 Permit to be valid, KDOW must issue a Section 401 Water Quality Certification (WQC) Permit. The USACE cannot approve a 404 permit until after a 401 WQC permit is approved.

Therefore, projects that involve the discharge of dredged or fill materials into Waters of the United States, including wetlands, are regulated by the United States Army Corps of Engineers under the Clean Water Act (Section 404) and require Section 401 Certification. The project may not start until all necessary approvals are received from KDOW.

Examples of these activities include:

- Stream relocations
- Road crossings
- Stream bank protection
- Construction of boat ramps
- Placing fill
- Grading
- Dredging
- Ditching
- Mechanically clearing a wetland
- Building in a wetland
- Constructing a dam or dike
- Stream diversions

For additional information please refer to:

- <http://hcky.org/wp-content/uploads/2017/10/KY-Erosion-Prevention-and-Sediment-Control-Field-Guide.pdf>

The Kentucky Division of Water has outlined nine (9) general conditions that apply to water quality certifications of individual projects. Applicants should not assume that following these conditions removes the obligation of obtaining required Section 401 and 404 permits:

- Measures shall be taken to prevent or control spills of fuels, lubricants or other toxic materials used in construction from entering the watercourse.
- All dredge materials shall be removed to an upland location and/or graded on adjacent areas (so long as such areas are not regulated wetlands) to obtain original streamside elevation; i.e., overbank flooding shall not be artificially obstructed.

- In areas not riprapped or otherwise stabilized, re-vegetation of stream banks and riparian zones shall occur concurrently with project progression. At a minimum, re-vegetation will approximate pre-disturbance conditions.
- To the maximum extent practicable, all in-stream work under this certification shall be performed during low flow.
- Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances where such in-stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize re-suspension of sediments and disturbance to substrates and bank or riparian vegetation.
- Any fill or riprap, including refuse fill, shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created because of its placement.
- If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when work will be done.
- Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.
- Should evidence of stream pollution of jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution) the Kentucky Division of Water shall be notified immediately by calling (502) 564-3410.