

217 - Corps of Engineers 404 Permit – Streams and Wetlands

217.1 Section 404 of the Clean Water Act: This Section establishes programs to regulate the discharge of dredged and fill material into Waters of the United States, including wetlands. Activities in Waters of the United States that are regulated under this program include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and conversion of wetlands to uplands for farming and forestry.

The basic premise of the program is that no discharge of dredged or fill material can be permitted if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. In other words, the application for a permit, must show that steps have been taken to:

- To avoid stream and wetland impacts where practicable.
- To minimize potential impacts to streams and wetlands.
- To provide compensation for any remaining, unavoidable impacts through activities to restore or create streams or wetlands.

Compensation would include paying all costs including design, construction and monitoring costs to mitigate the stream or wetland impact. An alternative to this is to pay in to either the **Fee in Lieu of** program for streams or to a **Wetland Mitigation** fund for wetlands.

217.2 Permits: Regulated activities are controlled by a permit review process. There are three types of permits issued by the USACE. They are as follows:

- Nationwide Permits
- Regional General Permits
- Individual Permits

80% of the permits issued are nationwide permits, which include several general types of activities, as published in the Federal Register. A nationwide permit uses the same application as an individual permit. The application must be submitted to the regional USACE office notifying them of the intent to seek the permit.

Individual permits are required for projects that will impact more than 0.5 acre of wetland or stream, or more than 300 linear feet of perennial stream/500 linear feet of intermittent or ephemeral stream. An individual permit is usually required for potentially significant impacts.

Regional general permits are specific to each USACE division office. The Army Corps of Engineers grants up-front general permits to most discharges that will have only minimal adverse effects. These may be issued on a nationwide, regional, or state basis for particular categories of activities (for example, minor road crossings, utility line backfill, and bedding) as a means to expedite the permitting process.

Section 404(f) exempts some activities from regulation under Section 404. These activities include many ongoing farming, ranching, and silviculture practices.

217.3 Army Corps of Engineers Responsibilities:

- Administer the day-to-day program, including individual permit decisions and jurisdictional determinations.
- Develop policy and guidance.
- Enforce Section 404 provisions.

For additional information on stream and wetland mitigation see the following link:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainPermit.aspx>

217.4 United States Environmental Protection Agency Responsibilities:

- Develop and interpret environmental criteria used in evaluating permit applications.
- Determine scope of geographic jurisdiction.
- Approves and oversees State assumption
- Identify activities that are exempt.
- Review/comment on individual permit applications.
- Has authority to veto the Corps' permit decisions (Section 404[c]).
- Can elevate specific cases (Section 404[q]).
- Enforce Section 404 provisions.

U.S. EPA and the Army Corps of Engineers (USACE) jointly administer the program. In addition, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and State resource agencies have important advisory roles.

An Individual Permit normally takes a minimum of 6 months for approval. A Nationwide Permit averages 3 to 4 months for approval. If mitigation is required the permit process can take longer.

217.5 The 404 Individual Permit Process: The following timeline generally outlines the process for an individual permit application. This process should be verified for each specific permit request.

Public notice:

- Issued by the Corps within 15 days of receiving all permit information.
- Describes the permit application, including the proposed activity, its location, and potential environmental impacts. The public notice invites comments within a specified time.

Comment period:

- Generally scheduled for 15 - 30 days, depending on the proposed activity.
- The application and comments are reviewed by the Corps and other interested Federal and State agencies, organizations, and individuals. The Corps determines whether an Environmental Impact Statement is necessary.

Public hearing: Citizens may request that the Corps conduct a public hearing, however, public hearings are not normally held.

Permit evaluation: The Corps evaluates the permit application based on the comments received, as well as its own evaluation.

Environmental Assessment and Statement of Finding: The Statement of Finding document, which explains how the permit decision was made, is available to the public.

217.6 Contacts:

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