

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) FACT SHEET

WETLAND REGULATORY AUTHORITY

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material (see Definitions) into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development (such as wireless towers or community/training centers), water resource projects and infrastructure development (such as fiber deployment).

Section 404 requires a U.S. Army Corps of Engineers (USACE) Permit before dredged or fill material may be discharged into waters of the United States.

WHAT ARE WATERS OF THE UNITED STATES?

The term “waters of the United States” means:

- o All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- o All interstate waters including interstate wetlands;
- o All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - o Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - o From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,
 - o Which are used or could be used for industrial purposes by industries in interstate commerce.
- o All impoundments of waters otherwise defined as waters of the United States under this definition;
- o Tributaries of waters;
- o The territorial sea;
- o Wetlands adjacent to waters (other than waters that are themselves wetlands).

USACE PERMITS

When you apply for a USACE permit, you must show that you have, to the extent practicable, taken steps to avoid wetland impacts; minimized potential impacts on wetlands; and provided compensation for any remaining unavoidable impacts. The USACE issues **General Permits** and **Individual Permits** to authorize activities in waters of the United States, as described below. A proposed project’s impacts to environmental resources will determine what permit type is required.

GENERAL PERMITS

General Permits comprise a series of permits issued by the USACE for minor structures, work or discharges either nationwide or in specific states or regions across the country that will result in only minimal adverse effects. There are three types of general permits – Nationwide Permits, Regional General Permits, and Programmatic General Permits.

NATIONWIDE PERMITS (NWP)

NWPs are issued by USACE on a national basis and are designed to streamline authorization of projects that produce minimal impact on the nation’s aquatic environment. The NWPs most relevant to Broadband grant programs would be NWP 23 – Approved Categorically Excluded Projects and NWP 57 – Electric Utility and Telecommunication Activities. More information on the NWPs can be found at this link – [Nationwide Permit Information \(army.mil\)](#).

REGIONAL PERMITS AND PROGRAMMATIC GENERAL PERMITS

A regional general permit is issued for a specific geographic area by an individual USACE District. Each regional general permit has specific terms and conditions, all of which must be met for project-specific actions to be verified.

Programmatic general permits are based on an existing state, local, or other Federal programs and designed to avoid duplication of that program. A State Programmatic General Permit (SPGP) is a type of permit that is issued by USACE and designed to eliminate duplication of effort between USACE districts and state regulatory programs that provide similar protection to aquatic resources. In some states, the SPGP replaces some or all the USACE nationwide permits, which results in greater efficiency in the overall permitting process.

For more information on USACE permitting and a list of regional or programmatic general permits used by USACE districts across the nation click this link - [Obtain a Permit \(army.mil\)](#).

DEFINITIONS

DISCHARGE OF DREDGED MATERIAL

Means the addition, including redeposition, of dredged material, runoff from a contained land or water disposal area, and any addition, including redeposition, of excavated material. These activities include mechanized land clearing, grading, filling in low areas, side casting of excavated material from new ditching work, and other placement of excavated material into waters of the United States, including wetlands.

DISCHARGE OF FILL MATERIAL

Means the addition of fill material used for the primary effect of replacing any portion of a water of the U.S. with dry land or of changing the bottom elevation of a water of the U.S., including wetlands. The placement of pilings constitutes a discharge of fill material when such placement has or would have the effect of a discharge of fill material.



Additional permitting and regulatory information can be obtained from the appropriate USACE Division and/or District where your project is located. See the USACE International Boundary Map (arcgis.com) to determine what division/district your project is in. You can click on the project vicinity and be directed to a boundary map with additional information and links to Division and District websites.

GENERAL PERMIT APPLICATION

In general, the following should be submitted to the USACE to obtain verification that your activity is authorized under a general permit. A consultation with the USACE District Office is encouraged prior to beginning your application. **NTIA and your FPO should be contacted prior to initiating consultations and submitting permit applications.**

- Description of the project, the impacted environment, construction methods and surrounding environs and purpose of the proposed action.
- Vicinity map - locate the site of the **entire project** on a USGS Quadrangle showing geographic context
- Site Plan showing localized position of the project including the limits of disturbance.
- Detail plan view showing the proposed activity, which identifies project components, resources areas, and project limits.

Clearly show activity within jurisdictional water bodies or wetlands. If the project involves the discharge of dredged or fill material, show limits of wetland filing and the area of fill in square feet. The plan should include the dimensions of proposed structures and areas of work. Also, where possible, indicate distances to recognizable landmarks (e.g., existing roadways and buildings, utility poles, fences).

GENERAL PERMIT APPLICATION EVALUATION

USACE will determine whether your project complies with the general permit criteria. Some permits will require reporting to USACE. Reporting requirements will be outlined in the permit conditions. Some project proposals may be non-reporting to the USACE meaning that the permit conditions will not specify any reporting requirements. For these projects, it is the applicant's responsibility to meet the non-reporting thresholds contained in the terms and conditions of the permit. In all cases, applicants will be required to comply with their individual state and local permitting programs. Presently, there are no fees associated with general permits and work must be completed within the authorized period specified in the permit.

INDIVIDUAL PERMIT

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the USACE, under a public interest review which includes a public comment period, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines. Consult a USACE representative early to find out what information will be required during the review process and to arrange a pre-application meeting.

INDIVIDUAL PERMIT APPLICATION

For an Individual Permit (IP), you will need to prepare ENG Form 4345 – [Application For Department of the Army Permit](#). Additionally, a vicinity map, a plan view and cross sections must be provided in a required format, outlined in the permit application guidance, on 8.5" X 11" paper or mylar. The application (see above link) provides instructions and detailed requirements for completing the application.

If NTIA requires an Environmental Assessment (EA), the EA can often be used to address IP requirements. NTIA and USACE would coordinate to ensure as much efficiency as possible.

EVALUATING AN INDIVIDUAL PERMIT

The Corps will acknowledge receipt of your application and provide a file number. Refer to this file number when inquiring about your application. The decision whether to grant or deny a permit is based, in part, on a public interest review of the probable impact of the proposed activity and its intended use. When a public notice is required, the review takes into consideration all comments received and other relevant factors, such as temporary and permanent impacts to resources. Benefits and detriments are balanced by considering effects on many factors such as conservation, navigation, shore erosion & accretion, recreation, water quality, etc.

SECTION 401 – WATER QUALITY CERTIFICATION

Under Section 401 of CWA, a Federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a Section 401 water quality certification is issued, or certification is waived. States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications. In cases where a state or tribe does not have authority, EPA is responsible for issuing certification.

A certifying authority may waive certification expressly, or by failing or refusing to act within the established reasonable period of time (one year). In making decisions to grant, grant with conditions, or deny certification requests, certifying authorities consider whether the permitted activity will comply with applicable water quality standards, effluent limitations, new source performance standards, toxic pollutants restrictions and other appropriate water quality requirements of state or tribal law. This link provides additional information on the Section 401 Certification – [Overview of CWA Section 401 Certification | US EPA](#). Applicants should also check with the Water Quality Divisions/Departments in the state where their project would occur.

Applicants should check with state and local regulations regarding impacted wetlands that are not within Federal jurisdiction as they may fall under a state program.

