Clean Water Act 401/404 Permitting

Construction, sedimentation and erosion control plans and storm water plans are required by JCPU to show all waters and wetlands. Any impact to jurisdictional waters and/or wetlands must meet the requirements of the Clean Water Act (CWA) Section 401 and 404 permitting programs. Due to staffing limitations, the United States Army Corps of Engineers (Corps) is unable to identify (delineate) the limits of their regulatory authority and strongly recommends that landowners retain an environmental consultant to identify these areas on their properties, which could then be verified by the Corps. Identification of aquatic resources facilitates the landowner’s ability to adequately demonstrate the required avoidance and minimization required by regulations when pursuing permit requests.

Sections 401 and 404 regulate impacts to jurisdictional streams and wetlands by providing a process to ensure that damage to streams and wetlands is limited to the minimum amount necessary to complete a project.

**Section 404**

Jurisdictional waters of the United States (including streams, wetlands, and impoundments of waters are regulated by the Corps and are subject to the rules of Section 404 of the CWA. Minor projects that result in minimal impacts to waters of the United States may be permitted under one of the 52 Nationwide Permits (NWPs), which is a type of general permit, issued by the Corps. Each NWP has specific terms and conditions that are relevant to the covered activities and notification requirements vary by activity type. Additionally, many of the NWPs require Pre-Construction Notification (PCN) to the Corps prior to the discharge of any dredged or fill material into waters of the United States. The PCN and supporting documentation is effectively the permit application.

Applicants are advised to thoroughly review the NWP terms and conditions in order to determine the applicability of the NWP to their project. If an applicant is unclear as to which NWP would be most appropriate for their project, they should coordinate with the Corps for assistance.

The Corps approves or denies each permit application based on the purpose and need for the project and overall impacts. If approved, the Corps issues a NWP verification for the impacts specified in the permit application. Once a complete application is received, the Corps typically has 45 days to issue or deny the verification.

Under Section 404(e) of the Clean Water Act, the Corps can issue general permits to authorize activities that have only minimal individual and cumulative adverse environmental effects. General permits can be issued for a period of no more than five years. The Corps issues nationwide permits for a wide variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities. Utility line construction falls under the Nationwide 12 provisions.

Applicants are required to avoid and minimize impacts to the maximum extent practicable and provide adequate information on impacts to endangered/threatened species and cultural resources, if applicable. The following excerpt from Section 404(b)(2) of the Clean Water Act describes avoidance and minimization:

“No discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.”
Should a project’s impacts exceed the NWP thresholds, the applicant may request authorization to complete the project under an Individual Permit (IP). Note that an IP necessitates a much more rigorous review of the proposed project to include an on- and off-site alternatives analysis and a public notice. Once a complete application is received, the Corps typically has 120 days to issue a permit decision. Applicants are strongly encouraged to consult with the Corps prior to submitting an application for an IP.

**Section 401**
The 401 & Buffer Permitting Branch of the North Carolina Department of Environmental Quality (NC DEQ) is responsible for implementing the state's waters, wetlands, and riparian buffer regulatory programs and assisting with compliance and enforcement procedures.

Under Section 401 of CWA, certain impacts also require formal notification to NC DEQ which places the project under review of the Division of Water Resources (DWR) 401/Wetlands Unit. The DWR reviews the request and approves or denies a Water Quality Certification for the project. Once a complete application is received, the DWR has 60 days to issue or deny the Water Quality Certification.

Failure to notify the Corps or DWR for impacts could constitute a violation, which, under the CWA, carries fines up to $50,000 per day or imprisonment. In areas where endangered species and/or their habitat are identified, impacts could also constitute a violation of the Endangered Species Act, which also has provisions for fines and imprisonment.

More information on permitting and the rules of the Clean Water Act can be found at the U.S. Army Corps of Engineers and North Carolina Department of Environmental Quality websites.

US ACE 401/404 Permitting Coordination  
[https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/](https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/)

US ACE Nationwide Permitting (primarily Nationwide 12)  
[https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits/](https://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits/)  

NC DEQ 401/404 Permitting  
Project Name:______________________________________________________________

Project Location:__________________________________________________________

(Parcel Number or NC PIN)

Engineer’s Certification (sign and seal)

I hereby certify that all jurisdictional waters and wetlands are accurately identified and shown on the plans and that all permitting requirements of the sections 401 and 404 of the Clean Water Act have been met.

☐ 401/404 Permit enclosed

☐ 401/404 Permit Application Under Review, Submitted _________________

☐ 401/404 Permit not required under sections 401 and 404 of the Clean Water Act

_________________________________________  ____________________________  ____________
Type/Printed Name                      Signature                          Date