

218 - 401 Water Quality Certification & Floodplain Management

218.1 - 401 Water Quality Certification: Projects which involve the discharge of dredged or fill materials into waters of the United States, including wetlands, are regulated by the U.S. Army Corps of Engineers under Clean Water Act Section 404 and require Section 401 certification. Examples of activities which may require a Section 404 permit and Section 401 Water Quality Certification 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 and stream diversions.

The following link is a list of permits and approvals issued by The Kentucky Division of Water: <http://www.water.ky.gov/permitting/>

The Clean Water Act Section 401 Water Quality Certification (WQC) program in Kentucky ensures that activities which may involve a discharge into waters of the State which require federal permit or license are consistent with Kentucky's water quality standards in Title 401, Chapter 5 of the Kentucky Administrative Regulations.

The Section 401 certification is authorized by the federal Clean Water Act and KRS Chapter 224. In Kentucky, the Water Quality Certification Section in the Water Quality Branch is responsible for implementing the Section 401 program.

For wetland-related impacts involving greater than one acre of wetland loss, the applicant should follow the Wetland Mitigation Guidelines when applying for a WQC. Wetland losses involving less than one acre may be regulated by the U.S. Army Corps of Engineers. The U.S. Army Corps of Engineers is responsible for making official, jurisdictional wetland determinations.

For stream-related impacts that involve more than 200 linear feet of stream disturbance, the applicant should submit detailed plan and profile drawings along with the application. Impacts in streams or lakes designated as Special Use Waters always require an individual WQC and a detailed sediment and erosion control plan.

See the following link for information on Special Use Waters:

<http://water.ky.gov/waterquality/Pages/SpecialUseWaters.aspx>

For both wetland and stream disturbances including activities in a regulated floodplain, the applicant must complete and submit an KDOW Application for Permit to Construct Across or Along a Stream and/or Water Quality

Visit <http://www.water.ky.gov/permitting/> for more information on the Permit to Construct Along or Across a Stream

218.2 – Floodplain Management:

The Kentucky Division of Water Floodplain Management Section has the primary responsibility for the approval or denial of proposed construction and other activities in the 100-year floodplain of all streams in the Commonwealth. Typical activities permitted are dams, bridges, culverts, residential and commercial buildings, placement of fill, stream alterations or relocations, small impoundments and water and wastewater treatment plants. It should be noted that any bridges targeted for demolition are subject to bat surveys by USFWS

The process for obtaining a permit begins with the submittal of a completed application with a location map, plans of the proposed construction and the addressing of public notice. If there is existing flood data on the proposed site (i.e., National Flood Insurance

Program flood maps, Corps of Engineers flood studies or previous permit data), then a permit review may begin. If there is no existing data, the submittal of survey information is required in order to perform an in-house flood study of the area.

The Application for Permit to Construct Across or Along a Stream is available at <http://water.ky.gov/permitting/Pages/CertificationForms.aspx>.

Section engineers use the Corps of Engineers HEC-2 and HEC-RAS computer programs to analyze the effects of the proposed construction on existing flood conditions. Use of this program (or flood studies if they are available) enables the establishment of expected 100-year flood heights and the delineation of the floodway (a portion of the floodplain that is restricted to little or no construction). From this analysis, construction limits for fills and buildings and required elevations for finished floors or flood proofing can be provided. For all construction, especially bridges and culverts, a check is made to ensure that the project has only minimal impacts on existing flood levels. Regulations limit the effect to a maximum of one foot. If the proposed project is unacceptable based on the review, the applicant is sent a denial letter with possible options.

If the reviewer determines the project meets regulatory requirements and all deficiencies have been corrected and all necessary modifications to the drawings have been made, a draft permit is written to be reviewed by the supervisor and branch manager. If they concur that the proposal meets all state floodplain laws, regulations and standards, the permit is prepared and signed. Appropriate requirements and limitations are listed on the permit. The permit also bears the condition that construction must begin within one year of the date of signature. If started within that one-year period, the permit is valid until project completion. If objections to the project have been raised, letters to those objecting are also sent with instructions as to their rights for a hearing under the statutes.

The Floodplain Management Section will notify the applicant, in writing, within at least 20 working days from the date of receipt of the completed application whether the permit will be approved or denied. If deficiencies are noted in the application, the applicant will be notified of them. The 20-day time period does not begin until a complete application package is submitted.

A list of downloadable documents and publications related to floodplain construction are located at the following link. <http://water.ky.gov/floodplain/Pages/default.aspx>.

For More Information Contact:

Kentucky Division of Water

14 Reilly Road

Frankfort, KY 40601

Phone: (502) 564-3410

General Conditions for Water Quality Certification

PLEASE NOTE: These general conditions apply to water quality certifications of individual projects by the Division of Water. 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 dredged material 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 or 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 **(800) 564-2380**.