



2A-3 Stormwater Regulations and Permitting

A. Introduction

In Iowa, two agencies administer permit programs for protecting the state's water resources and ensuring their wise use. The agencies are:

1. **The Iowa Department of Natural Resources (IDNR).** The IDNR administers permit programs for conserving and protecting Iowa's water, recreational, and environmental resources, and, for the prevention of damage resulting from unwise floodplain development. In addition, the IDNR has jurisdiction over sovereign lands and waters, and certain fee title lands of the state, and land below the ordinary high water mark on meandered streams and lakes.
 - a. **Clean Water Act Section 401 Permit Program.** The IDNR administers the 401 permit program. A Section 401 Water Quality Certification is IDNR's certification that a project will not violate state water quality standards, and is required before the U.S. Army Corps of Engineers can issue a Section 404 permit. Short and long-term impacts on water quality and water-related uses are evaluated in the Section 401 certification review.

Information on the 401 permit can be found on the Web at:
<http://www.iowadnr.com/water/section401/info.html>.

- b. **Clean Water Act Section 402 Permit Program.** The U.S. EPA (Environmental Protection Agency) has assigned the IDNR the responsibility of administering the NPDES (National Pollutant Discharge Elimination System) program (402 permit program) for activities within the State of Iowa. The IDNR issues NPDES permits, conducts inspections, and provides enforcement. While the EPA has delegated program responsibilities to the IDNR, it retains the authority to conduct its own inspections and issue fines to the offender.

With respect to stormwater discharge, NPDES regulations are directed at three groups:

- 1) **Municipal Separate Storm Sewer Systems (MS4s).** The NPDES program requires certain designated operators of MS4s to develop a stormwater management plan with the purpose of reducing pollutant levels in the runoff discharged by publicly-owned storm sewer systems.
- 2) **Industrial Activity.** Industrial activities that have the potential for contamination of stormwater runoff are required to obtain and comply with an NPDES permit. These activities include storage of chemicals or fuel in areas that are exposed to precipitation or runoff. The intent of this permit is to reduce chemical pollutants in runoff.
- 3) **Construction Activities.** Construction activities that result in the disturbance of more than one acre of ground cover are required to obtain an NPDES permit. The goal of the permit is to reduce the amount of sediment being transported from construction site by stormwater runoff.

There are two types of permits available: individual and general. The individual permit is unique and developed specifically for the facility it covers. This type of permit rarely applies to construction activities. General permits are developed to cover many different users. The conditions of these permits have been developed to cover activities that have similar types of discharges. A general permit covers most construction activities.

An application for a stormwater NPDES permit must be submitted to the IDNR for the following activities:

- 1) **General Permit No. 1 – Stormwater Discharge Associated with Industrial Activity:**
 - Construction activity that disturbs one or more acres, or which is part of a larger project that disturbs one or more acres total
 - Several types of industrial or commercial activity
- 2) **General Permit No. 2 – Stormwater Associated with Industrial Activity for Construction Activities:**
 - Projects disturbing one acre or more
 - General permit normally associated with earthwork, grading, or any other non-agricultural land-disturbing activity
 - Municipal Separate Storm Sewer System (MS4) program that covers municipalities and counties between 10,000 and 100,000 population. The affected entities must develop a stormwater management program that provides best management practices and addresses six minimum control measures under the MS4 program

Local communities may implement additional regulations, such as requiring additional permits. It should be noted that even if an erosion and sediment control permit is required by a local jurisdiction, an NPDES permit must still be obtained for sites one acre or larger.

Information on the 402 permit can be found on the Web at:

<http://www.iowadnr.com/water/stormwater/info.html>

- c. **Other IDNR permits** (relating to protection of water and recreational sources or adjacent lands):
 - 1) *Floodplain constriction permits* – The IDNR has authority to regulate construction on all floodplains and floodways in the state.
 - 2) *Construction permits* – Pursuant to the Iowa Code, no person, association, or corporation can build or erect a pier, wharf, sluice, piling, wall, fence, obstruction, building or erection of any kind, upon or over any state-owned land or water under the jurisdiction of the IDNR, without first obtaining a permit from the IDNR.
 - 3) *Special permits* – Projects involving a standard recreational boat dock require authorization by the IDNR. Permits are also required by commercial operations removing sand or aggregate from meandered streams.
2. **The U.S. Army Corps of Engineers (USACE).** The USACE has authority over public waterways. This jurisdiction includes:
 - All waters susceptible to use in interstate or foreign commerce
 - All interstate waters, including interstate wetlands
 - 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
 - All impoundments of waters
 - Tributaries of waters identified above

- Wetlands adjacent to waters (other than waters that are themselves wetlands)
- a. **Clean Water Act Section 404 Permit Program.** This program regulates the non-point source discharges of dredged or fill material into waters of the United States, including wetlands.

Information on the 404 permit can be found on the Web at:
<http://pillar.saj.usace.army.mil/permit/regulations/section404.htm>

The USACE issues two types of 404 permits: Individual and general.

- 1) Individual permits are issued to a single entity (individuals or companies) to authorize specific activities. Once a complete permit application is received by the USACE, a public notice is issued, which describes the proposed project. The USACE evaluates all comments received and makes a final permit decision.
- 2) A general permit authorizes specific activities that have minimal environmental impacts, such as bank stabilization activities, construction of farm buildings, and filling of relatively small areas, if the permitted activity is consistent with the Clean Water Act regulations. A general permit can be issued on a nationwide basis. Activities authorized by a general permit require less review than an individual permit would require.

Some projects may fall under a nationwide permit but require a "Pre-Construction Notification" (PCN) and wetland delineation to the USACE before a nationwide permit is applicable. The PCN gives the USACE a chance to review an activity to determine if potential impacts warrant processing under an individual Section 404 permit.

Detailed information on existing nationwide general permits, called Nationwide Permits, may be found in the Federal Register. Summary information regarding Nationwide Permits may be found on the Web at:
http://www.usace.army.mil/inet/functions/cw/cecwo/reg/Summary_table.pdf

Refer to this source to determine if your project exceeds the threshold for formal regulatory involvement. Several activities, although generally authorized under a Nationwide Permit, require Pre-Construction Notification (PCN) and wetland delineation.

Typical activities addressed under Nationwide Permits include:

- a) Linear Transportation Projects (NWP 14)
- b) Residential Commercial, and Institutional Developments (NWP 39)
- c) Agricultural Activities (NWP 40)
- d) Recreational Facilities (NWP 42)
- e) Stormwater Management Facilities (NWP 43)

Nationwide Permit Program, Fact Sheet No. 5(IA) can be found on the Web at:
http://www.mvr.usace.army.mil/Regulatory/nationwidepermits/Documents/FS_IA_5.pdf

CAUTION: *The USACE District Engineer now has discretionary authority to require an individual permit on a case by case basis. Highly controversial projects, in particular, should be examined carefully. (These should be submitted to the USACE regardless of the amount of wetlands involved).*

B. Regulated activities

Construction, excavation or filling in streams, lakes, wetlands, or on floodplains may require permits from both the IDNR (401) and the USACE (404). A Joint Application Form (Protecting Iowa Waters) will be submitted to both agencies to begin the permit process for any of the following activities:

- Cutting the bank of a river, stream, or lake
- Any excavation or dredging in a wetland, lake, stream, or river
- Channel changes or relocations (including stream straightening)
- Construction of any permanent dock, pier, wharf, seawall, boat ramp, beach, intake, or outfall structure on a stream, river, or lake
- Placement of any fill, riprap, or similar material in a stream, river, lake, or wetland
- Construction of a dam across any waterway
- Placement of fill, construction of levees, roadways and bridges, and similar activities on a floodplain
- Construction of buildings on a floodplain

The Joint Application Form can be obtained from the IDNR, or on the Web at:

<http://www.iowadnr.com/water/section401/files/Form36a.pdf>

The following material is required for all permit applications:

<ul style="list-style-type: none">• Joint Application Form• Applicant's contact information• Authorized agent's contact information• Brief description of project• Legal description of project location	<ul style="list-style-type: none">• Contact information for all immediate and adjoining property owners• Vicinity map• Plan view• Cross-sectional view
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NOTE: *Submitting a set of design drawings (preliminary or final) of a proposed project with the permit application is helpful to the reviewers.*

Each agency will notify the applicant whether or not permits are required, following a 60 to 90-day review and processing period. Each agency will also notify the applicant if additional information is required.

CAUTION: *Proceeding without the necessary permit is against state and federal laws and may result in legal proceedings and fines.*

The issuance of a permit by a federal agency triggers requirements of the National Environmental Policy Act (NEPA). The USACE may consult with federal and state agencies to ensure the proposed project is consistent with the Endangered Species Act, and National Historic Preservation Act, state water quality standards, and other inter-agency or inter-governmental considerations.

C. Wetlands

Wetlands are defined as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” Wetlands have three essential characteristics, all of which must be present for an area to be identified as a wetland:

- Hydrophytic (water-loving) vegetation
- Hydric soils
- Wetland hydrology

Examples of wetlands include, but are not limited to:

<ul style="list-style-type: none">• seasonally flooded basins or floodplains• wet meadows• shallow marshes	<ul style="list-style-type: none">• deep marshes• shrub swamps• woodland swamps• bogs
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CAUTION: *If affected wetlands are on agricultural land, the Natural Resource Conservation Service (NRCS) should be contacted for assistance in making wetland determinations and permitting requirements.*

D. Wetland impacts

Wetland delineation. Identification of Section 404 regulated wetlands requires wetland delineation by the USACE, the US Environmental Protection Agency, or by submission of a wetland delineation report to the USACE by a qualified wetland specialist. Wetland delineation is often requested or contracted by a property owner who needs to know restrictions on the development or use of the land. In particular, a property owner may need a wetland delineation when seeking an individual or general permit.

1. **Wetland mitigation.** Every effort should be made at the beginning of a project to avoid or minimize impacts. Any project that does not meet the conditions of any one of the Nationwide Permits must be sent to the USACE and probably will require satisfactory mitigation for the loss of wetlands. Mitigation is defined as wetland restoration, creation, enhancement, or preservation for the purpose of compensating for unavoidable wetland losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial. Compensation of impacted resources is only accepted if mitigation occurs in the following sequence:
 - a. Avoid direct or indirect impact by not taking a certain action.
 - b. Minimize impacts by limiting the degree of action.
 - c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations.

e. Compensating for unavoidable impact by replacing or providing substitute resources:

- 1) Replace or provide substitute resources on-site.
- 2) Replace or provide substitute resources off-site at an approved location, owned by either the project sponsor or a federal, state, or local conservation entity.
- 3) Purchase compensatory credits at an approved Wetland Bank.

CAUTION: *Wetland mitigation by repair, rehabilitation, restoration, or replacement requires monitoring and maintenance plans to ensure mitigation goals are met in perpetuity.*

If there is any doubt about a project, contact the appropriate office for a ruling:

Iowa Department of Natural Resources Wallace State Office Building ATTN: Floodplain Permits Section, Sovereign Lands Section 502 East 9 th Street Des Moines, IA 50319-0034 515-281-8693	
USACE District Engineer Operations Division Clock Tower Building PO Box 2004 Rock Island, IL 61204-6361 309-794-5373	US Army Engineer District Omaha Corps of Engineers PO Box 5 Omaha, NE 68102 402-896-0896