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**Section 404 Permit**

**Summary**

Section 404 of the Clean Water Act (CWA) (33 USC 1344) regulates the discharge of dredged or fill material into Waters of the United States (WOTUS), including wetlands. Activities in WOTUS regulated under this law include fill for development, water resource projects (such as dams and irrigation channels), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into WOTUS, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities). The United States Army Corps of Engineers (USACOE) administers the permit process.

**Permit Name**

[Application for Department of the Army Permit](https://www.poa.usace.army.mil/Portals/34/docs/regulatory/engform43452012oct.pdf):

* Nationwide permit (52 available in AK)
* Regional general permit (8 available in AK)
* Individual permit (for greater than minor impacts)

**Applicability**

The discharge of dredged or fill material into WOTUS.

**Processing Times**

* Nationwide permit: 30-45 days
* Regional general permit: pre-authorized coverage for certain activities, e.g. single and multi-family residential development
* Individual permit: 90-120 days (more if a public hearing or EIS is required)

**Agency Coordination**

Lead Agency: USACOE

The USACOE is organized into districts and further divided into field offices. Permit applications are submitted to the respective district or field office, upon which they are assigned to a reviewer.

Complementary Roles of Other Public Agencies:

* United States Coast Guard for navigability
* Alaska Department of Environmental Conversation for contamination, point discharge, and dewatering
* Alaska Fish & Game for permits to modify fish bearing streams, which usually involves the placement of fill such as riprap.

**Consultation Process**

The USACOE is engaged early in the NEPA process for jurisdictional determination and scoping. They should be consulted throughout the NEPA process to appropriately designate the class of action. A pre-application meeting is recommended to discuss mitigation alternatives.

**Information Necessary:**

What does the agency need from you?

* Location and scope of project
* Other agency permits being sought
* Whether a Jurisdictional determination was completed
* Outcome of wetlands delineation and methods employed
* Quantity of fill or dredged material being placed in WOTUS (cubic yards and acres)
* Contact information
* Type of permit being applied for (nationwide, regional, individual)
* Drawings that follow USACOE standards:
  + <https://www.poa.usace.army.mil/Missions/Regulatory/Permits/Permit-Application-Drawings/>

Who/How do you get that information?

For DOT&PF projects, the permit application is compiled at the 95% design level (CatEx projects). Projects being assessed under an EA typically require a draft permit application be prepared alongside the EA.

**Special definitions**

WOTUS: the interpretation of the USACOE’s jurisdiction is constantly litigated. A landmark case brought before the Supreme Court in 2006 (*Rapanos v. United States*, 547 U.S. 715 [2006] ) did not produce a majority decision. The definition of WOTUS continues to be challenged to this day.

**Enforcement and Penalties**

The EPA and USACOE have joint responsibility for enforcing Section 404 of the CWA. Depending on the severity of the violation, they can issue:

* administrative compliance orders;
* administrative civil penalties;
* civil judicial enforcement actions; or
* criminal judicial enforcement actions.

**REGULATIONS (CFR)**

State: N/A (State of Alaska does not have authority)

Federal: 33 USC 1344

**Other Resources**

* USACOE: <https://www.poa.usace.army.mil/>
* DOT&PF: <http://dot.alaska.gov/stwddes/desenviron/index.shtml>
* FHWA: <https://www.environment.fhwa.dot.gov/default.aspx>
* NWI: <https://www.fws.gov/wetlands/>
* MOA: <http://anchoragestormwater.com/maps.html>
* CWA enforcement: <https://www.epa.gov/cwa-404/enforcement-under-cwa-section-404>