

**STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**WATER QUALITY STATE 401 CERTIFICATION
APPLICATION INSTRUCTIONS**

The instructions given should aid in completing the required application form. If you have additional questions, do not hesitate to contact the West Virginia Department of Environmental Protection, Division of Water and Waste Management, 401 Certification Program, 601 57th Street SE, Charleston, West Virginia 25304, or telephone 304-926-0499.

- * **Per 40 CFR § 121.4, the project proponent must first request a pre-filing meeting at least 30 days prior to application submission.**

An electronic copy of the completed application form including a map of location and scaled plan drawings and sections must be submitted. If additional space is needed for your response, label the attachment to correspond to the Section or Part in the application. Any material or information referenced must be in an application, which is being submitted jointly with this application, not from previously submitted applications. All referenced responses must detail an overview of the material, rather than “see Section.” Once the application is accepted, an invoice for \$350 will be sent to the applicant.

Applicant Information

- Provide the *applicant’s name, company, address, telephone number and email address.*
- An agent is not required. Provide the name and telephone number of a contact person in charge of preparing or in knowledge of this application.
- *If an agent or consultant is preparing this application, provide the name, company, address, telephone number, and email address of the person.*

Project Description

Check the appropriate category and provide the requested information.

- If the *Individual 404/401 Certification* category is chosen, provide a Corps Public Notice Number.
- If the *Nationwide 404 permit requiring 401 Certification* category is chosen, provide a Nationwide Permit Number.
- If the *404 permit modification* requiring 401 Certification category is chosen, provide the Original Corps Public Notice Number.
-
- If the *Section 10* of the Rivers and Harbors Act Permit category is chosen, provide the Corps Public Notice Number.

- If a *Federal Energy Regulatory Commission Licenses* (FERC) category is chosen, provide the FERC Project Number and complete the application and submit the following:
 - 1) Send a letter to the Director, Division of Water and Waste Management requesting State 401 Certification.
 - 2) Include with this application, the following items:
 - ✓ Copy of the license application,
 - ✓ Copy of the FERC Order of Acceptance of License Application for Filing, and
- ***Type of operation:*** State the type of operation this application is proposing. (Road Construction, Hydroelectric, Quarry, Private Development, etc.).
- Identify the type of ***activity (ies) this application is proposing in streams or wetlands:*** (filling, dredging, draining, grading, relocation, reconstruction, flooding or impounding, etc.)
- Provide a brief description as to the ***purpose***, need and intended use for this proposed project.
- ***Brief Description of Proposed Project*** (include all features).

Project Information

- Name of the ***county*** where project is located. Provide the name of the town where the project is located or the ***nearest town*** and coordinates (6 digits decimal).
- Provide ***directions to site:*** include a USGS topographical map section showing location of proposed project, name of quadrangle, etc.
- ***Name of watershed.***
- ***Size of watershed*** in acres.
- ***Name of stream(s)*** to be impacted. The name of the streams where work will occur and receiving streams to which they drain.
- If Section 10 Permit, provide maximum extent of length and width of river surface to be occupied.
- Identify any ***wetlands*** on project site.

- Identify in acres the *wetlands* that will be *impacted* by the proposed project.
- Describe the *functions of the wetlands*. Is the wetland part of a floodplain, emergent wetland, forested wetland, open water wetland, or scrub-shrub wetland?
- Describe the *type of material* that will be dredged or filled. State the quantity of the material to be dredged or filled in cubic yards.

No Practical Alternative Demonstration

Submit a conclusive demonstration to justify the proposed activity (ies). If more than one activity is involved in the project (fills, culverting, stream relocations, etc.), justify the need for each activity by providing the following:

- Show that other alternatives were considered and why they were eliminated.
- Show that the activity will impact Waters of the U. S. no more than is necessary to accommodate its proper construction and operation.
- Provide drawings, mapping, plans, specifications and design analysis for the selection of the preferred site or plan.
- See 47CSR5A (Section 4.2.f.1.)

Wetlands Delineation

- Wetlands function and value assessed and documented.
- Perform a delineation of any wetland on site using the most current and acceptable method as determined by the US Army Corps of Engineers (currently the 1987 Army Corps Manual for Identifying and Delineating Wetlands).

Stream Restoration Plan

- Submit a comprehensive plan for all streams and segments being proposed for temporary impact that must be restored to the pre-disturbance condition.
- The Plan must outline riparian revegetation, fluvial geo-morphological, or other acceptable methods to address impacts.
- State how the Monitoring Requirements as required under Title 47, Series 5A, Section 6.3 will be addressed. A compensatory mitigation site shall be monitored until success criteria outlined in the restoration plan has been met. Monitoring reports shall be submitted yearly until the project has been determined complete and successful for three consecutive years.

Mitigation / Compensation Agreement

Title 47 Series 5A, Section 6.1. The Department may require the applicant, as a condition of certification, to compensate for aquatic resources lost through compensatory mitigation and/or monetary compensation. If mitigation/compensation is required, necessary agreements will be executed prior to impacts. Performance guarantees (e.g. bonding) will be required for Permittee Responsible Mitigation.

- Submit completed West Virginia Stream and Wetland Valuation Metric (WVSWVM) forms for all impacted streams and wetlands. Provide the number of credits required if purchasing from a Corps approved Mitigation Bank and the number of credits if the West Virginia Department of Environmental Protection In Lieu Fee Program is used (credit numbers will be different due to temporal loss). If proposing Permittee Responsible Mitigation, complete WVSWVM forms for proposed mitigation.
- Submit a Conceptual Mitigation Plan to compensate for any impact to aquatic resources as required under Title 47, Series 5A, Section 6.1.
- Follow the Compensation Mitigation Requirements as set forth in Title 47, Series 5A, Section 6.2 for determining the methods for in-kind & monetary compensation and wetland replacement.

Signature – Statement of Affirmation

A statement affirming that all information above submitted for review is accurate and true to the best of applicant's knowledge.

Public Notice

A Class I Legal Advertisement is required for all proposed activities other than FERC Licensing, which requires Class II.

Class I: Must be advertised by the applicant one (1) time in a qualified newspaper of general circulation in the county of the proposed activity, followed by a thirty (30) day comment period.

Class II: Must be published one (1) time in a qualified newspaper of general circulation in the county in which the activity will take place and in a principle newspaper of regional circulation in the area where the project is to be located, followed by a thirty (30) day comment period.

Both Class I and II Advertisements require the following information be provided:

- A clear and accurate location map of a scale and detail equal to the West Virginia General Highway Map. The map must be a minimum of four inches (4") by four inches (4"). Near the center of the proposed activity, note the longitude and latitude line. Locate a North Arrow in the upper corner of the map.

- The name and business address of the applicant to include the street address or route number.
- A narrative description clearly describing the location of the proposed activity.
- The name(s) of the receiving stream(s) being proposed for impact.
- The location where a copy of the certification request is available for public review.
- The name and address of the Department of Environment Protection Office where written comments or requests for public hearing on the certification request can be submitted.
- The type of operation.
- The type of federal permit being sought.

Once the certification is ready for advertisement, the applicant **must** contact the WVDEP to inform of the date that the public notice will be advertised as WVDEP will provide notice of the proposed action to its email subscribers.

The advertisement and publication dates for the certification request must be *certified* and *notarized* by the publishing newspaper.

The certificate of publication is then made part of the approved application no later than four (4) weeks after the date of publication.