

Clean Water Act § 404

**U. S. Army Corps of Engineers
St. Paul District**



Section 404 of the Clean Water Act

Permits for the discharge of dredged or fill material into waters of the United States (Includes most wetlands) at specified disposal sites.

Section 404 Permits

- **Fill material is defined as material that has the effect of replacing any portion of a water of the United States (Includes most wetlands) with dry land or changing the bottom elevation of any portion of a water of the United States.**
- **Includes rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.**

Waters of the U.S.

- **Defined in 33 C.F.R. 328.3:**
 - **Used in interstate or foreign commerce**
 - **Interstate waters, including interstate wetlands**
 - **Intrastate waters and wetlands whose use, degradation or destruction could affect interstate or foreign commerce (includes recreational use, fisheries, commerce, industrial purposes)**
 - **Tributaries and impoundments**
 - **Wetlands adjacent to jurisdictional waters.**

What is a wetland?

- **“those areas that are inundated or saturated by surface or ground water 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”.**

Identifying Wetlands

- **1987 Corps of Engineers Wetland Delineation Manual, and Supplements**
- **Three Criteria: hydrophytic vegetation, hydric soils, indicators of wetland hydrology.**

Some Wetland Functions and Values

- Short-term surface water storage
- Long-term surface water storage
- Retention, removal of dissolved substances
- Accumulation/retention of inorganic sediment
- Reduced property and crop damage from floodwaters
- Maintenance of fish habitat during dry periods
- Maintenance of water quality (safer drinking water)
- Maintenance of water quality, clear water, high quality fish populations in streams

Permit Review

- **Implementing regulations (33 CFR 320-331)**
- **The permit decision involves balancing the environmental impacts of the project and the findings of the public interest review process**
- **Permit decisions must also comply with the Section 404(b)(1) Guidelines.**

404(b)(1) Guidelines

- **For projects that are not “water dependant”, alternatives that do not involve a discharge into an aquatic site are presumed to be available.**
- **A permit can only be issued for the *Least Damaging Practicable Alternative***

General criteria considered in evaluating all applications

- **The relevant extent of public and private needs**
- **The practicability of using reasonable alternative locations and methods to accomplish project purposes**
- **The extent and permanence of the beneficial and/or detrimental effects the proposed project may have on public and private uses to which the area is suited.**
- **No permit is granted if the proposal is found to be contrary to the public interest**

How long does it take?

- **St. Paul District makes 70 – 80 % of all Individual Permit decisions in less than 120 days.**
- **Approximately 90% of all actions, including general permits, are completed in less than 60 days.**

Complete Application

- **Name and Address**
- **Description of Activity and any related activities**
- **Adjacent Landowners**
- **Project Location**
- **Description of any completed work**
- **Drawings, plans, sketches**
- **Wetland Delineation**
- **Signed Application**

Where to find information

- <http://dnr.wi.gov/>
 - Applications
 - Maps (GIS)

Contact Information

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Questions???