

Regional Conditions for Nationwide Permits in Kentucky
May 2002

Kentucky Department for Environmental Protection has issued Section 401 water quality certification for NWP's 1, 2, 4, 5, 6, 8, 9, 10, 11, 15, 18, 19, 20, 22, 24, 28, 29, 33, 34, 35, 36, 40, 41, and 42. Conditional certification is issued for the following NWP's: 3, 7, 12, 13, 14, 21, 23, 25, 27, 30, 31, 37, 39, and 43. Certification is denied for the following NWP's: 16, 17, 32, 38, and 44. See the water quality certification for the State of Kentucky.

CORPS REGIONAL CONDITIONS

Notification - Notifications for all Nationwide Permits should include a location map (USGS topographical map) and project drawings on 8½" x 11" paper.

Outstanding Resource Waters (ORWs) Notification - For activities in ORWs for the NWP's listed below, a Pre - Construction Notification (PCN) will be required to the Corps. The Corps will coordinate with the appropriate resource agencies on these NWP's for impacts to ORWs, or for impacts greater than 0.25 acre of "waters of the United States".

NWP 3 (Maintenance), 7 (Outfall Structures and Maintenance), 12 (Utility Line Activities), 14 (Linear Transportation Crossings), 27 (Stream and Wetland Restoration Activities), 29 (Single Family), 39 (Residential, Commercial, and Institutional Developments), 40 (Agricultural Activities), 41 (Drainage Ditches), 42 (Recreational Facilities), 43 (Stormwater Management Facilities), 44 (Mining Activities).

Further information:

Outstanding Resource Waters (ORW's) in Kentucky are streams designated by the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet. The list is attached.

Pre-Construction Notification (PCN) Information on PCN can be found at NWP General Condition No. 13 (Federal Register, Volume 66, No. 154, Thursday August 9, 2001, pp 42095-42097).

NWP Mitigation Information

Mitigation includes measures that avoid, minimize, or compensate for impacts to the aquatic ecosystem. Avoidance and minimization associated with nationwide permit authorizations are limited to on-site measures.

Avoid: Take all appropriate and practicable measures to avoid adverse impacts to the aquatic ecosystem.

Minimize: Take all appropriate and practicable measures to minimize adverse impacts to the aquatic ecosystem.

Compensate: The applicant may be required to implement appropriate and practicable measures to compensate for adverse project impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized. Compensatory mitigation can take many forms. Some of which are the use of buffer zones adjacent to the stream corridors and wetland areas; stream restoration or "naturalization"; project specific mitigation; mitigation banking; in-lieu fee based mitigation; protection of areas by deed restrictions, or conservation easements.

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Department of the Army permittees are responsible for developing a mitigation plan and submitting it to the Corps. A mitigation plan should generally include:

1. A complete description of efforts made to avoid and minimize adverse project impacts to the aquatic ecosystem, and a thorough description of the proposed compensatory mitigation.
2. A jurisdictional determination, including wetland delineation (if appropriate) conducted in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual.
3. A detailed description of the nature and location of all proposed ground disturbing activities and structures associated with the compensatory mitigation project.
4. For work that would create new aquatic resources or modify existing aquatic resources, provide as appropriate a description of the proposed hydrology, a soil description, and a planting plan.
5. A proposal for monitoring the success of the proposed mitigation plan, including the name and telephone number of the responsible party, success criteria, and a compliance reporting program. Generally, monitoring should be for five years or continue at least two years after all mitigation project activities have been completed and planting survival requirements have been achieved. Include all appropriate contingency plans and address provisions for long-term operations and maintenance.

NOTE: A list of all excluded waters can be obtained from the Kentucky Division of Water or from the respective Corps of Engineers District Office.