

*Application for
Individual Water Quality State 401 Certification
State of West Virginia*



*for
Non Coal Related Facilities*

**STATE OF WEST VIRGINIA
APPLICATION FOR 401 WATER QUALITY CERIFICATION
FOR NON COAL RELATED ACTIVITY**

This application must be completed whenever a proposed activity requires a Clean Water Act Section 401 Individual State Water Quality Certification from the West Virginia Department of Environmental Protection (WVDEP). A Section 401 Certification from the State is required to obtain a Federal Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers, or any other federal permits or licenses for projects that will result in a discharge of dredged or fill material into any waters of the State. To determine whether you need to submit this application to the West Virginia DEP, contact the U.S. Army Corps of Engineers District Office with jurisdiction over your permit area, the West Virginia Division of Water Resources at (304) 558-6649.

The West Virginia DEP Section 401 Water Quality Certification program, is authorized by Section 401 of the Clean Water Act (33 U.S.C. § 1341) and the West Virginia Code §22-1-6(d)(6). West Virginia Legislative Rule 47 CSR 5A outlines the application process and criteria for decision by the Secretary of the WVDEP. In order for the DEP to issue a Section 401 Certification, the project must comply with the State Water Quality Standards (46 CSR 1) and not potentially result in an adverse long-term or short-term impact on water quality. Included with the Water Quality Standards is the Antidegradation Implementation Rule (60 CSR 5) effective July 2, 2001. The Rule includes additional application requirements and public participation procedures. Because there is a potential for lowering of water quality associated with every project being reviewed for Section 401 Certification, every applicant must provide the information required of this application.

Information provided with the application will be used to evaluate the project for certification and is a matter of public record. If the Secretary determines that the application lacks information necessary to determine whether the applicant has demonstrated the criteria set forth in Legislative Rule 47CSR5A, the West Virginia Department of Environmental Protection will inform the applicant in writing of the additional information that must be submitted. The application will not be accepted until it is considered complete by the Section 401 Program Manager. The Director of the DEP Division of Water Resources will inform you in writing when your application is determined to be complete.

Please submit the following with the \$250 application fee to: Division of Water Resources, Section 401 Program, 1560 Kanawha Boulevard East, Charleston, West Virginia 25311

- * Two (2) sets of the completed application form, including a map of location and scaled plan drawings and sections.

Please submit two (2) copies of this form along with the \$250 filing fee for review. Any information missing in this package will be considered incomplete. A full permit review will not be made until all information is provided. The Department of Environmental Protection will notify you of any missing and/or further information necessary for a proper and thorough review for certification.

For Agency Use Only	
Date Received by Agency:	DEP application No.:
Public Notice Number:	Filing Fee of \$250 received:
Reviewer's Name:	Date Application Deemed Complete:

APPLICANT INFORMATION

Applicant Name: _____			Agent Name: _____		
Company: _____			Company: _____		
Address: _____			Address: _____		
City: _____	State: _____	Zip Code: _____	City: _____	State: _____	Zip Code: _____
Telephone Number: _____			Telephone Number: _____		
Fax Number: _____			Fax Number: _____		

PROJECT DESCRIPTION

State the type of federal permit applicant is applying for:

_____ Individual 404/401 Certification – Public Notice # _____

_____ Nationwide 404 permit requiring 401 Certification – Nationwide Permit # _____

_____ A modified 404 permit requiring 401 Certification – Original Public Notice # _____

_____ A Federal Energy Regulatory Commission Licenses – FERC Project Number _____

Type of Operation: _____

Activity proposed in wetland or waterway: _____

Project Purpose: _____

Briefly describe proposed project: _____

PROJECT INFORMATION

County:	Nearest Town:
Directions to site: include a USGS topographical map section showing location of proposed project.	
Watershed Name:	Watershed Size:
Name of Stream(s): (Where work will occur. Label each stream number 1,2,...etc. Next to stream, identify its use category and impairment status if applicable)	
Acreage of watershed: (above the farthest downstream permanent structure for each stream)	
Wetlands on project site:	Wetlands impacted by proposed project: (acres)
Briefly describe wetland functions:	
Describe the type, composition and quantity of fill material:	

NO PRACTICAL ALTERNATIVE DEMONSTRATION

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WETLANDS DELINEATION

STREAM RESTORATION PLAN

MITIGATION / COMPENSATION AGREEMENT

PUBLIC NOTICE

SIGNATURE – STATEMENT OF AFFIRMATION

Please read carefully before signing

Application is hereby made for a water quality certification to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true and accurate. I certify that I have the authority to undertake the activities proposed in the application. I understand and agree to allow representatives of the Department of Environmental Protection to enter upon said property in order to inspect the proposed project. I understand that the granting of other permits by local, state or federal agencies does not release me from the requirements of obtaining the certification requested herein before commencing the project.

Applicants Printed Name: _____

Applicant's Signature: _____ Date: _____

PUBLIC NOTICE

Publication Date:

Expiration Date:

(30 Days After Date of Initial
Publication)

TO WHOM IT MAY CONCERN:

State Water Quality Certification, as required by Section 401 of the Clean Water Act, has been requested of the West Virginia Department of Environmental Protection (WVDEP) for:

 (Name of Project)

 (Name and address of Applicant)

SCOPE OF CERTIFICATION: Pursuant to Section 401 of the Federal Clean Water Act, the State may, either certify, certify with conditions, deny or waive certification that the proposed activity will comply with Sections 301, 302, 303, 306 and 307 of the Federal Clean Water Act and other appropriate requirements of State law. When issuing certification, the WVDEP may consider the proposed activity's impact on water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources under its jurisdiction. Procedural and interpretive regulations governing the scope of the Department's certification, public comment, hearings and appeals are in Title 47, Series 5A.

DESCRIPTION OF THE ACTIVITY:(Provide a description which details the activity proposed for the wetland, river or stream to be affected.)

PROJECT LOCATION: (Provide topographic or county highway map showing location of project and include milepoint for rivers and streams.)

INFORMATION AVAILABLE: The Water Quality Certification application is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the following location:

WV Department of Environmental Protection
Division of Water Resources
Regulatory Review Program
1560 Kanawha Boulevard, East
Charleston, West Virginia 25311-1088

COMMENTS: Comments and information relating to Section 401 Water Quality Certification for this activity are hereby solicited. Such information on the activity's impact will be considered if postmarked prior to the expiration date of this notice. The need for a public hearing will be determined based on an evaluation of specific request for such hearing. All comments and information should be mailed to:

Regulatory Review Program
WVDEP-Division of Water Resources
1201 Greenbrier Street
Charleston, West Virginia 25311-1088

Comments and information postmarked later than the expiration date may not be considered.

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 Department of Environmental Protection, Division of Water Resources, Regulatory Review Program, 1560 Kanawha Boulevard East, Charleston, West Virginia 25311, and telephone 304-558-6649 and fax 304-558-3778.

- * **Two (2) sets of the completed application form, including a map of location and scaled plan drawings and sections.**

Two copies of the completed application package must be submitted along with a \$250 filing fee. If additional space is needed for your response, use 8 ½ x 11 paper and 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.”

Applicant Information

- Provide the *applicant’s name, company, address and telephone/fax numbers.*
- 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, and telephone / fax numbers 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 Public Notice Number.
- If the *Nationwide 404 permit requiring 401 Certification* category is chosen, provide a Nationwide Permit Number.
- If a *modified 404 permit requiring 401 Certification* category is chosen, provide the Original 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 Resources 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
 - ✓ Certificate of publication from the newspaper in the county wherein the discharge originates publishing a Class II legal advertisement.
- **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, waterways 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:** 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.

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**.
- 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.
- Identify any **wetlands** on project site.

- Identify in acres the *wetlands* that will be *impacted* by the proposed project.
- Describe the *functions of the wetland*. 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.

Wetlands Delineation

- Perform a delineation of any wetland on site using the 1987 Army Corps Manual for Identifying and Delineating Wetlands or any other method acceptable by the West Virginia Division of Natural Resources.
- Wetlands function and value assessed and documented.

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 concurrent 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 certification.

- Submit a “Draft Copy” of the agreement being proposed for the compensation for any impact to aquatic resources that exceed State Conditions as required under Title 47, Series 5A, Section 6.1.
- Follow the Compensation guidelines as set forth in Title 47, Series 5A, Section 6.2 for determining the methods for in-kind & monetary compensation and wetland replacement.
- Submit a signed General Mitigation Plan for proposed impacts, which do not exceed State Conditions requiring compensation.

Public Notice

Submit a Class I Legal Advertisement for all proposed activities other than FERC Licensing, which requires Class II.

- **Class I** 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, it 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.

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.

- **Class II** Advertisements require the following information:
 - ✓ Describe the activity being proposed.
 - ✓ Advise the public of the scope of certification.
 - ✓ The public's rights to comment on the proposed activity and request for a public hearing.
 - ✓ The name of the person to address their requests and comments.

- Once the certification is ready for advertisement, the applicant must advertise it 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. The advertisement and publication dates for the certification request must be certified and notarized by the publishing newspaper and submitted as part of this application.

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.