

Important Facts to Know Before Working in Streams or Wetlands

Q. What are 404 and 401 permits?

A. These permits are based on two different sections of the federal Clean Water Act: Sections 404 and 401. The **U.S. Army Corps of Engineers (USACE)** is the federal agency responsible for issuing 404 Permits; these permits are required for the discharge of fill material into streams, wetlands and open waters. The **North Carolina Division of Water Resources (DWR)** is the state agency responsible for issuing 401 Certifications; these certifications go along with the permits issued by the USACE.

Q. What types of activities require 404 and 401 permits?

A. A permit may be required for any work which takes place in a stream or wetland, whether the impact is permanent or temporary. The following activities may require permits:

- Any disturbance to the bed (bottom) or banks (sides) of a stream
- Any disturbance to the soil or hydrology (how water flows) of a wetland
- The damming of a stream channel to create a pond or lake
- Placement of any material within a stream, wetland or open water, including:
 - Material that is necessary for the construction of any structure or impoundment requiring rock, sand, dirt, debris or other material
 - Culvert installation for recreational, industrial, commercial, residential or other uses
 - Stream restoration or stabilization projects
 - Causeways, road fills, dams, dikes or artificial islands
 - Property protection or reclamation devices such as rip rap, groins, breakwaters or levees
 - Fill for intake and outfall pipes or utility lines
- Temporary impacts, including:
 - Dewatering of a site for construction purposes
 - Temporary fill for access roads, cofferdams, utility crossings, storage and work areas

Q. How much wetland or stream area can I impact?

A. The best practice is to avoid all impacts to streams, wetlands and open waters when possible. Before you start any project that might have impacts, contact your local **USACE** or **DWR** representative to determine whether permits are needed. It is essential that when you plan your project, you seek all practical attempts to **avoid** or **minimize** impacts to streams, wetlands and open waters. The permitting process is not automatic – applicants must demonstrate that they have avoided and minimized impacts to the maximum extent practical.

- **Avoidance:** Has the project been designed to avoid impacts to wetlands, streams and other natural resources? Have alternative options, designs and locations been considered?
- **Minimization:** Where project impacts are unavoidable, is the project designed such that the impacts have been minimized to the maximum practical extent?

Q. How do I know if I'm working in a stream or wetland?

A. A stream has a well-defined channel that contains water for at least part of the year. Some may have flow that is increased by stormwater runoff; some may dry up during part of the year. Streams do **not** have to show up on area maps, soil surveys, or USGS topographic maps to be regulated. Streams may look like ditches and may have been modified in the past by straightening, relocating, dredging or filling.

Wetlands are the interfaces between land and water. They have specialized hydric soils and support water loving plants and wildlife.

A qualified environmental consultant (one who routinely identifies streams and wetlands with the regulatory agencies) may be able to provide guidance regarding stream or wetland determinations, however **only** the **USACE** or **DWR** staff can legally determine if a feature is a stream or wetland.

Q. Do I need permits to clean out a stream?

- A. To remove woody debris, including debris accumulated from recently constructed beaver dams, you do not need permits. However, any disturbance to the stream, lake or pond bed (bottom) or banks (sides) requires 404 and 401 permits from the **USACE** or **DWR**.

Q. Do I need permits to build a pond?

- A. If you place a dam in the stream channel to impound water, also known as an “on-line” pond, then you need 404 and 401 permits. Most ponds can be constructed “off-line” and adjacent to the stream channel. If there are wetlands adjacent to the stream, then you may need a permit to excavate those areas (contact your local **USACE** or **DWR** representative to make that determination).

Q. Are there any activities that are exempt, such as agriculture or driveway crossings?

- A. The federal laws allow some exemptions for agriculture and forestry activities; however, these exemptions are very specific. You should contact your local **USACE** representative before starting **any** project in streams, wetlands or open waters regardless of the size or purpose of your project or any advice you’ve received from other agencies, contractors, builders, farmers, engineers, consultants etc.

Q. What will happen if I do work without getting permits?

- A. Performing work in streams, wetlands or open waters without getting proper permits can have serious consequences. If you are found to be in violation of federal and state laws, you may be fined and/or required to restore the impacted areas. If you are unsure if a planned activity may need a permit, contact your local **USACE** or **DWR** representative before starting.

Q. What is the significance of counties with trout waters in North Carolina?

- A. Activities may be restricted in order to protect this valuable resource. Restrictions will depend on the activity, stream designation and time of year. If you are in a Trout county, check with your local **USACE** representative before you plan your project to see if you may be affected by these restrictions.

Q. How do I apply for permits?

- A. In North Carolina, use a single application form – the **Pre-Construction Notification (PCN) Form** – to request a permit from the USACE and a certification (permit) from the DWR. The PCN form and instructions are available online:
<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/Permits/NationwidePermits/PreconstructionNotification.aspx> Please follow the instruction form carefully to ensure your permit application is complete before submission. Omitting required information will delay the review process for your project. Any application received without the necessary fee will be returned. For large projects that require individual permits, a different application form must be used.

Contact Information

DWR – Asheville Regional Office (828) 296-4500

Covers: Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties

Contact information for other NC counties: <http://portal.ncdenr.org/web/wq/regional-offices>

USACE – Asheville Regulatory Field Office (828) 271-7980

Contact information for NC counties:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/Contact/CountyLocator.aspx>