

NRCS Client Referral for Section 404 of CWA

Do not finalize planning or designs until Clean Water Act issues are resolved. Proceed with caution so that the planning process does not progress to the point that potential mitigation and wetland planning concerns can't be addressed as part of the planning process and alternative analysis documented on the final NE-CPA-52.

The following information is divided into two separate sections: Nationwide 27 and Nationwide 43. Use the appropriate section to determine which category of action your project fits into:

- No Referral Circumstances
 - Potential Nationwide Permit Needed (Without Mitigation)
 - Potential Nationwide Permit Needed (With Mitigation)
 - Potential Individual Permit
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Nationwide Permit 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or disking for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities.

No Referral Circumstances

- Generally not applicable since wetlands are almost always affected unless project is purely wetland creation on an upland site.
- Excavation ONLY and disposal in upland site. Note: a permit may be needed for actions such as temporary construction fill or return water resultant for adjacent sediment disposal, de-watering or stockpiling.

Potential Nationwide Permit Needed

- Project associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas and the restoration and enhancement of non-tidal streams and other non-tidal open waters, provided those activities result in **net increases** in aquatic resource functions and services.

AND

Only native plant species should be planted at the site. All areas disturbed by construction shall be vegetated with appropriate perennial, native grasses and forbs and maintained in this condition.

AND

- Project will NOT result in conversion of stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. This NWP does not authorize stream channelization.

Potential Individual Permit

- Project will result in conversion of stream or natural wetlands to another aquatic habitat type.
OR
- Project substantially disrupts lifecycle movements of indigenous aquatic life (i.e. multiple water control structures on linear, free-flowing water courses).
OR
- Functional Assessment does NOT show an increase in functions and services.

Nationwide Permit 43. Stormwater Management Facilities

Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

No Referral Circumstances

No stream bed filled or excavated in perennial, intermittent, or ephemeral streams or wetlands.

- The stream bed is the substrate of the stream channel between the ordinary high water marks.

AND

- No wetlands impacted by any of the following: filling, flooding, excavation, or drainage. Wetlands include NFSAM prior converted cropland (PC) and artificial (AW) delineated wetlands that still meet the three criteria.

In uplands (e.g. including the following features: Swales, gullies, erosional features and ditches excavated wholly in and draining only uplands).

Potential Nationwide Permit Needed (Without Mitigation)

- Not greater than 300 linear feet of stream bed impacted: include filled or excavated. This does not include flooding (inundation) of streambed. Mitigation of stream bed impacts may still be required on a case by case basis.

AND

- Not greater than 0.10 acre of wetlands impacted (includes impoundment area).

AND

- Not a new project in a perennial stream.

Potential Nationwide Permit Needed (With Mitigation)

- Not greater than 300 linear feet of stream bed impacted: include filled or excavated. This does not include flooding (inundation) of streambed.

AND

- Greater than 0.10 acre of wetlands impacted BUT is less than or equal to 0.50 acre of waters of the United States impacted. To get the total acre of waters of the U.S. impacted add the surface area of stream bed identified in first bullet PLUS the area of wetland impacted by filling, flooding, excavation, or drainage. If wetland criteria are met in stream bed then address those areas as “wetlands” and do not double count the surface area as both wetland and stream bed.

AND

- Not a new project in a perennial stream.

Potential Individual Permit

- Greater than 0.50 acres of waters of the United States impacted.
OR
- Greater than 300 linear feet of stream bed impacted.
OR
- A new project in a perennial stream.

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NRCS only provides this information to the U.S. Army Corps of Engineers (COE) upon request of the landowner.

PROJECT INFORMATION

Landowner: _____

Address: _____

Location of proposed activity: County _____ Sec. _____ T _____ R _____

Tract No. Field No. _____ Site No. _____

Describe the proposed activity:

PROJECTED CWA ACTION (authority for this determination rests with of the U.S. Army Corps of Engineers)

- No Referral Circumstances
- Potential Nationwide Permit Needed (Without Mitigation)
- Potential Nationwide Permit Needed (With Mitigation)
- Potential Individual Permit

SIGNATURES

Landowner signature indicates approval for NRCS to assist with providing this information to the COE.

LANDOWNER

DATE

NATURAL RESOURCES CONSERVATION SERVICE

DATE

ATTACHMENTS

Required:

- ENG Form 4345 Application for the Department of Army Permit. NRCS should not be listed as the applicant or authorized agent.
- Digital photo(s) with descriptions of proposed project site and wetland features.
- Aerial photo with project and area of potential effect identifying project components (i.e. centerline and extent of dam structure features, extent of principal spillway flood pool, locations of wetlands and/or stream beds). Include the location for excess spoil placement.
- Table separately noting the linear feet of stream bed and the acres of wetland impacted in project footprint (excavation/fill and permanent inundation).

| | Filled (acres) | Flooded (acres) | Excavated (acres) | Drained (acres) | Filled (linear ft) | Excavated (linear ft) | Conservation Pool Flooded (linear ft) |
|------------|----------------|-----------------|-------------------|-----------------|--------------------|-----------------------|---------------------------------------|
| Stream bed | | | | | | | |
| Wetland | | | | | | | |

- NRCS-CPA-026E wetland conservation determination and map
- NE-CPA-FSA-Worksheet-8 and data map with site specific data collection points identified and for every wetland or Waters of the U.S. a Cowardin wetland designation of wetland type as per the *Classification of Wetlands and Deepwater Habitats of the United States*.
- NE-CPA-52 Environmental Evaluation if NRCS technical or financial assistance being provided. Must include required Guide Sheets and applicable attachments.
- Nationwide Permit 27 requires a copy of the signed “Wetland Agreement”

Supplemental as applicable (check which apply):

NE-CPA-FSA-Worksheet-9_Nebraska_Minimal_Effect_Procedure

Expedited minimal effect: Check if activity eligible for a Nebraska specific.

- Center Pivot Travel Ways in Wetlands (see Appendix A)
- Grassed Waterway Construction (see Appendix B)
- Invasive Tree Removal (see Appendix C)
- Minor Channel Maintenance (see Appendix D)
- Stream Crossings (see Appendix E)
- Tree Removal from Playa Wetlands (see Appendix F)
- Wetland Pumping – Health and Safety (see Appendix G)

NE-CPA-FSA-Worksheet-10_Nebraska_Wetland_Functional_Assessment_Protocol

Proposed Mitigation Plan