

**STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**WEST VIRGINIA STATE WATERS PERMIT
FOR FEDERALLY NON-JURISDICTIONAL WATERS
APPLICATION INSTRUCTIONS**

The instructions given should aid in completing the required application form. This application must be completed for any activity involving a discharge into federally non-jurisdictional waters of the State which require a West Virginia State Waters Permit from the West Virginia Department of Environmental Protection (WVDEP). In accordance with the West Virginia Water Pollution Control Act (WPCA), the WVDEP has the responsibility to protect all waters of the State. The WPCA requires a permit for activities that may cause an alteration to the physical or biological integrity of the waters of the State. To determine whether you need to submit this application to the WVDEP, contact the WVDEP - Division of Water and Waste Management, 401 Certification Program at (304) 926-0499.

The WVDEP West Virginia State Waters Permit is authorized by W. Va. Code §22-11-8(b)(3). The statute does not differentiate between those waters of the State which are under the federal jurisdiction of the Corps of Engineers and those waters of the State which are outside said jurisdiction, nor is there any provision contained in the WPCA which provides for an exemption from obtaining a permit for impacts to federally non-jurisdictional waters. Therefore, WVDEP follows the existing West Virginia Legislative Rule §47CSR5A which pertains to jurisdictional waters for the purpose of outlining this application process and compensatory mitigation guidelines.

- * **Per 40 CFR § 121.4, the project proponent must first request a pre-filing meeting at least 30 days prior to application submission.**

An electronic copy of the completed application form including a map of location and scaled plan drawings and sections must be submitted. If additional space is needed for your response, label the attachment to correspond to the Section or Part in the application. Any material or information referenced must be submitted jointly with this application, not from previously submitted applications. All referenced responses must detail an overview of the material, rather than "see Section." Once the application is accepted, and invoice for \$350 will be sent to the applicant (this fee may be waived if filing jointly for 401 certification of this project).

Applicant Information

- Provide the *applicant's name, company, address, telephone number and email address.*
- 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, telephone number, and email address of the person.*

Project Description

Check the appropriate category and provide the requested information.

- **Type of operation:** State the type of operation this application is proposing. (Road Construction, Hydroelectric, Quarry, Private Development, etc.).
- Identify the type of **activity or activities this application is proposing in federally non-jurisdictional streams 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** (include all features).

Project Information

- Name of the **county or counties** where project is located. Provide the name of the town where the project is located or the **nearest town** and coordinates (decimal degrees).
- Provide **directions to site:** include a USGS topographical map section showing location of proposed project, name of quadrangle, etc.
- **Name of watershed** (12 digit HUC).
- **Size of watershed** in acres.
- **Name of federally non-jurisdictional stream(s)** to be impacted. The name of the streams where work will occur, and receiving streams to which they drain, if applicable.
- Provide total acreage of federally non-jurisdictional wetlands onsite and the acreage of federally non-jurisdictional wetlands that will be impacted by the proposed project.
- Describe the wetland type (emergent wetland, forested wetland, open water wetland, or scrub-shrub wetland) to be impacted and the function of the 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 or activities. 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 State 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.
- See 47CSR5A (Section 4.2.f.1.)

Delineation of Federally Non-Jurisdictional Streams and Wetlands

- Perform a delineation of any federally non-jurisdictional streams and wetlands on site using the most current and acceptable method as determined by the US Army Corps of Engineers (currently the 1987 Army Corps Manual for Identifying and Delineating Wetlands).

Mitigation / Compensation Agreement

The Department may require the applicant, as a condition of this permit, 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 impacts. Performance guarantees (e.g. bonding) will be required for Permittee Responsible Mitigation.

- Submit completed West Virginia Stream and Wetland Valuation Metric (WVSWVM) forms for all impacted federally non-jurisdictional streams and wetlands. Provide the number of credits required if purchasing from a Corps approved Mitigation Bank and the number of credits if purchasing from the West Virginia Department of Environmental Protection In Lieu Fee Program (credit numbers will be increased due to temporal loss). If proposing Permittee Responsible Mitigation, complete WVSWVM forms for proposed mitigation.
- Submit a Conceptual Mitigation Plan to compensate for any impact to federally non-jurisdictional aquatic resources.
- Follow the Compensation Mitigation Requirements as set forth in Title 47, Series 5A, Section 6.2 for determining the methods for in-kind and monetary compensation and wetland replacement.

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.

Public Notice

A Class I Legal Advertisement is required for all proposed activities.

If filing jointly for 401 certification of this project, you may include the federally non-jurisdictional waters information in the 401 Certification Public Notice. A separate public notice is not required.

Class I: Must be advertised by the applicant one (1) time in a qualified newspaper of general circulation in the county or counties of the proposed activity, followed by a thirty (30) day comment period.

According to W. Va. Code §59-3-2, 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 permit 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 permit request can be submitted.
- The type of operation.
- The type of permit being sought.

Once the permit is ready for advertisement, the applicant **must** contact the WVDEP to inform of the date that the public notice will be advertised as WVDEP will provide notice of the proposed action to its email subscribers.

The advertisement and publication dates for the permit 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.