

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, DIVISION OF AVIATION (NCDOA) STANDARD  
OPERATING PROCEDURE (SOP) FOR INTEGRATING CLEAN WATER ACT (CWA) SECTION 404  
COMPLIANCE AND NEPA DOCUMENTATION**

**NOVEMBER 2020**

**Permitting Requirements of the Clean Water Act (CWA)**

A water of the United States is considered a jurisdictional surface water or wetland under the CWA, meaning that it falls within the area of regulatory authority granted to the United States Army Corps of Engineers (USACE). If an airport sponsor/consultant determines that a proposed improvement project would discharge dredged or fill material into the waters of the United States, including wetlands, a CWA Section 404 permit is required, and early coordination with USACE, the United States Fish and Wildlife Service (USFWS), and other agencies having special interest in waters of the U.S. will also be required.

For many discharges that have minimal impacts, the USACE can grant **general permits**. General permits are issued on a nationwide, regional, or state basis for particular categories of activities (e.g., minor road crossings, culvert replacement) as a means to expedite the permitting process. By definition, general permits have already been issued and have gone through the NEPA process. A common and widely used general permit is the **Nationwide Permit**, which is a permit that has already been issued nationwide for certain specified activities. Proposed airport improvement actions which are covered by a nationwide permit generally do not involve extensive or costly coordination with regulatory agencies and should not be held up by the process of permit compliance.

For projects with potentially significant adverse wetland impacts or those exceeding the criteria for a general permit, **an individual permit** is usually required. The time to process an individual permit varies depending on the complexity of a project and the USACE district issuing the permit. The amount of impact to waters of the U.S. will determine the level of environmental analysis and permitting required, and the involvement of permitting agencies, as necessary. Compliance with the Endangered Species Act (ESA) and/or Section 106 of the National Historic Preservation Act may also be required before a Section 404 permit can be issued. Standard individual permits typically require a 30-day agency and **public review and can then take 60 to 120 days or more** to process and issue the permit. As a result, the preparation of a Section 404 permit application package should begin in the early stages of project planning.

**Note:** Airport improvement projects for which an individual permit is required are not, per Federal Aviation Administration (FAA) and NCDOA policy, categorically excluded and must be documented with an environmental assessment (EA).

**Integrating Section 404 Compliance and NEPA**

It is not necessary to complete the Section 404 permit process to complete the NEPA process. Additionally, completing the permit process does not mean the NEPA process is complete. Sometimes the airport sponsor applies for a Section 404 permit for projects requiring dredge or fill activities in jurisdictional wetlands after the NEPA document has been approved. There are benefits, however, to developing the permit application earlier in the process. Time savings and reduced controversy may outweigh the extra effort required to address Section 404 considerations as an integral part of the NEPA process. When the two processes are integrated effectively, the USACE's approval of the permit can be

concurrent with or closely follow the NCDOA approval. The USACE can be made a cooperating agency or the USACE may adopt the NCDOA final NEPA document when making a 404 permit decision, thereby avoiding the need to prepare additional NEPA documents.

Therefore, sponsors and their consultants are urged to consider the potential need for an individual permit as early as possible in the project development process. Specifically, sponsors and their consultants should:

1. Include preparation and submission to USACE of a CWA Section 404 individual permit application as a task for all work authorizations and scopes of work covering proposed improvement projects for which an EA will be required, if there is a potential for significant impacts to waters of the U.S. This will require that the sponsor/consultant evaluate the potential environmental consequences of proposed alternatives on all waters of the U.S. when submitting the work authorization or scope of work. The work authorization fee estimate and schedule should reflect what may be required for preparation of a permit application. If there is potential need for an Section 404 individual permit, but, based on conceptual plans, such a permit is unlikely, the sponsor/consultant may list the permit application task as “Additional Services” to be executed if needed.
2. The individual permit application process should start as soon as possible in the process of EA development so that a mitigation plan that is acceptable to USACE may be included in the EA, and so that sponsors and NCDOA can better estimate and provide for project funding.

Further guidance may be found in the FAA Order 1050.1F Desk Reference, Chapter 14 (February 2020). [https://www.faa.gov/about/office\\_org/headquarters\\_offices/apl/environ\\_policy\\_guidance/policy/faq\\_nepa\\_order/desk\\_ref/media/14-water-resources.pdf](https://www.faa.gov/about/office_org/headquarters_offices/apl/environ_policy_guidance/policy/faq_nepa_order/desk_ref/media/14-water-resources.pdf).