

COMMON QUESTIONS & ANSWERS FOR WETLAND CONSERVATION PERMITS (11/02/2007)

1. Can LCD Offices use the MOA applications?

NO - The application must be submitted by NRCS, FWS or DNR.

* If an LCD office is partnering with one of the agencies that are part of the MOA, they may have NRCS/FWS/DNR submit the application. The agency who submits the application is responsible for the project if any concerns or issues arise.

2. Do DNR projects require a manual code?

NO - For DNR projects on private land the applicant should be the property owner and DNR the agent. The normal permit process should be followed.

YES - For DNR projects on state land a manual code is the correct process. The general permit can serve as the manual code approval and for individual permits a standard manual code format used in your region may be issued. Please be sure to follow your regions manual code approval process, which varies by region.

3. If a dam is proposed does the landowner need to sign the application?

NO - The application allows for an agent to sign on the landowners behalf if they are the duly authorized representative for the landowner.

* If there is more than one applicant for a project, you will need to determine who the dam owner is and clearly document for the file and dams database for future contacts.

**If NRCS/FWS/DNR obtains a permanent conservation easement they would be listed as the dam owner and the applicant. This is the case for many WRP sites.

4. Are ditch plugs regulated as dams?

NO - If the earthen ditch plug is constructed according to NRCS Standard 657 (see Table 1) and there is no outlet pipe, the plug is considered a ditch fill. For wetland conservation activities ditch fills not considered dams and NR 353.04(1)(i) is not applicable to ditch fills.

YES - If the ditch plug contains an outlet pipe it is considered a water control structure and regulated as a dam.

5. Are wings allowed on ditch plugs?

YES - Earthen wings are allowed no greater than 4 times the width of the channel on either side of the ditch and the wings can not tie into high ground and must be no higher than the ditch fill. Any wings larger than this are considered dams.

* A minimum allowance of 0.5 feet shall be included in the settled fill height above the adjacent ground to ensure flow is directed around plug.

6. Are weirs regulated as dams?

YES – Weirs can still qualify for a GP if they impound < 50 acre-feet of water and meet all other GP eligibility standards. It is assumed that weir structures are contained entirely within stream bank and therefore are less than 6-feet from natural ground.

* An IP is required if the weir impounds > 50 acre-feet, these will be reviewed as small dams with minimal dam engineering review conducted unless there are hazards downstream. If the dam is taller than 6 feet from the bottom of the ditch they are technically a large dam but we will try to process them as efficiently as possible using logic on the dam failure requirement. Engineers should work with Bill Sturtevant to see how we can handle these the most efficiently.

7. Are dam checklists required?

YES - All Individual Permit Applications require completion of a dam checklist. Information included in dam checklist should be reflected in the submitted plans and design calculations. This checklist is included in the application packet.

YES - General Permit applications for all other applicants besides NRCS, FWS and DNR require a downsized dam checklist with the plans and design calculations. This checklist is included in the application packet.

NO – For GP projects submitted by NRCS, FWS and DNR the dam information is required in Appendix C on page 2, table. This table does not need to be completed for ditch plugs.

* The dam checklists were designed to help the applicant know what items they should consider when designing a dam and to speed the permit review process conducted by dam engineers. If the checklists are not provided with the plans and associated calculations the permit review by DNR may be lengthened and the application may be deemed incomplete.

8. Do DNR Dam Engineers review project plans?

YES - For all Individual Permit Applications.

NO – Most General Permits will not be reviewed by the dam engineer unless there is a potential significant adverse impact determined by WMS/resource manager associated with the dam or if there is an immediate hazard downstream of proposed structure.

*The review and design engineers should communicate with one another early on, especially for individual permits, to determine what level of engineering information and review will be necessary so a complete application can be submitted and reviewed most efficiently.

9. **Can we approve a general permit if NRCS issues a “waiver” from NRCS Conservation Practice Standards 378, 410, 638, and 657?**

YES – If the NRCS issues a waiver allowing a different design other than specified in their Conservation Practice Standard we can still issue a general permit if all other standards have been met. A copy of the waiver shall be submitted with the permit application so WMS is aware that project design may not be consistent with the NRCS Conservation Practice Standard, but the NRCS has reviewed alternative design and approved.

*Note: NRCS may not issue waivers from their standards for projects other than designed by NRCS.

10. **Do dam engineers review the small dams that need an IP (< 6’ in structural height and > 50 acre-feet of total storage)?**

YES - Like any small dam, these reviews should proceed quite quickly (assuming the standards are followed) unless there is an immediate hazard downstream or information in dam checklist indicates additional questions. For all IP’s the dam checklist is required along with plans and supporting calculations.

*Design Engineer should talk with Review Engineer early on to determine the level of engineering information and review that will be necessary.

**NR 333 requirements do not need to be met (e.g. dam failure analysis) unless there is an immediate hazard downstream and the DNR dam engineer requests compliance with NR 333.

11. **If a proposed project backs water onto adjacent properties, is a flood easement or flowage easement required?**

NO – If all properties affected by the project are listed as applicants, then no flood or flowage easement is required. There are conditions in the general permit indicating the current property owner shall inform any future buyers of wetland conservation project and associated flowage. The general permit also contains a finding of fact stating that all applicants and co-applicants may be liable if the project affects adjacent properties without the owner’s authorization.

YES – If all properties affected by the project are not listed as applicants, then a flood/flowage easement is required.

*NRCS/FWS/DNR Projects – There is a Self-Certification item that verifies if other properties are affected by the project that the affected property owners are either signatory to the project as co-applicants or a flood/flowage easement is contained within the agency file. A copy of the easement is not required to be submitted with application.

**All Other Applicants – All affected property owners must be listed as applicants on the application form and/or a flood/flowage easement must be provided with the application.

12. Is an NR 216 (Notice of Intent (NOI) or Stormwater Erosion Control Permit required for wetland conservation projects?

NO – If the project is required to obtain a permit under NR 353, which authorizes Chapter 30, 31 and Water Quality certification, then the project is not required to apply for and obtain a NOI. A condition of the NR 353 permit is that the project is in compliance with NR 151.11 and 151.12, Admin. Code. Please reference Stormwater Construction Site General Permit Coverage for Wetland Conservation Project guidance memo dated May 2007 for more details.

*NOTE: If there is land disturbance associated with the project that is not covered by the NR 353 permit (i.e. grading outside of the determined “bank” area) that exceeds one or more acres a NOI permit would be required.

YES – If the wetland conservation project does not require a NR 353 permit and the project disturbs one or more acres of land than a NOI is required.

13. If the project involves navigable waters without stream history is an NR 353 permit still required?

YES – There is no exemption in NR 353 for navigable waterways without stream history. Most projects involving these types of waters will fall under the general permit process unless there is a significant adverse impact or a dam is proposed that exceeds NR 353.04(1)(i).

14. When is NRCS considered the applicant and when is the landowner?

Landowner is the Applicant on 10 Year Agreements.
The Landowner and NRCS are co-applicants on 30 Year Easements.
NRCS is the Applicant on Permanent Easements.

15. When can a project be processed under NR 353.10?

This section applies only when the applicant is proposing to maintain existing features (dikes, embankments, ditches, dredging, etc) for the original project. Often times, these projects may not meet current standards, however, this section allows DNR to issue a “plan approval” in the form of an order.

*NOTE: The proposed maintenance cannot increase the footprint of flooding and/or filling beyond the original project or include new features such as ditches, dikes, scrapes, berms, etc. If this is the case the project could not be considered maintenance of the original project and must be reviewed under the general permit process if applicable, or as an individual permit.