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Chapter 14

WETLANDS/WATERS OF THE US

14.1 WETLANDS/WATERS OF THE US PROCEDURES

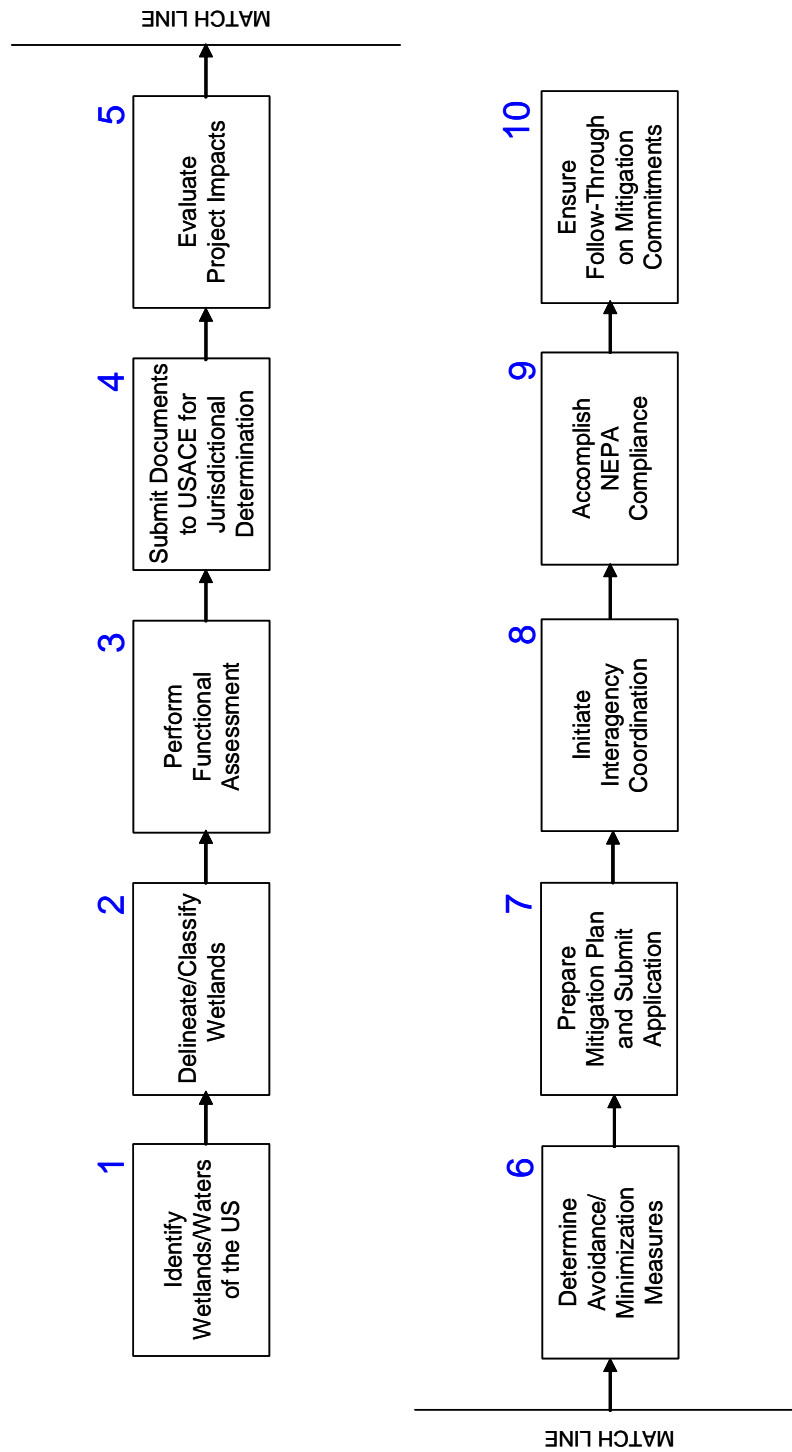


Figure 14.1-A — WETLANDS/WATERS OF THE US PROCEDURES

PROJECT ACTIVITY

Activity Title: Identify Wetlands/Waters of the US

Activity No.: 1

Activity Description:

The Environmental Services Division is responsible for conducting either a Preliminary Design Field Survey (PDFS) or an independent field survey to identify waters of the US, including wetlands that may be impacted by proposed construction activities. During the field survey, take note of waterbody location, type (e.g., perennial, ephemeral, intermittent) and other characteristics (e.g., presence of riparian vegetation) deemed pertinent in a jurisdictional report to the USACE. Photographs are required to supplement the content in the report that is submitted to the USACE.

Once the field survey has been completed and impacts to the waterbody from construction activities have been determined, coordination with the USACE begins. A report is submitted to the USACE that consists of pertinent information obtained from the field survey and other available information (e.g., topographic maps, aerial photographs) that will assist the USACE in determining jurisdiction. If wetlands, are impacted, a wetlands delineation will be performed to determine the jurisdictional wetlands.

Regulations/Guidance

Executive Order 11990 "Protection of Wetlands"

FHWA Environmental Guidebook

[FHWA Technical Advisory T6640.8A](#)

DOT Order 5660.1A "Preservation of the Nation's Wetlands"

PROJECT ACTIVITY

Activity Title: Delineate/Classify Wetlands

Activity No.: 2

Activity Description:

Delineate each wetland using the guidance stipulated by the USACE. The following information may be useful in delineating wetland boundaries:

- aerial photos,
- USGS topographic maps,
- National Wetland Inventory (NWI) maps,
- Natural Resource Conservation Service (NRCS) Wetlands Reserve Program data,
- soil surveys,
- data for prior NDOT projects in the vicinity of the newly proposed project, and
- field observation.

Classify each wetland using the US Fish and Wildlife Service (USFWS) classification system as described in the USFWS publication *Classification of Wetlands and Deepwater Habitats of the United States*.

Coordinate with the Location and Roadway Design Divisions to generate maps showing the location, boundaries and classification of wetland types in relation to the project alternatives under consideration.

Regulations/Guidance

FHWA Environmental Guidebook

[FHWA Technical Advisory T6640.8A](#)

“The Scope of CWA Jurisdiction After SWANCC,” Joint USACE/USEPA Memorandum, January 13, 2003, Federal Register

“Minimum Standards for Acceptance of Preliminary Wetlands Delineations,” USACE, Sacramento District, November 30, 2001

PROJECT ACTIVITY

Activity Title: Perform Functional Assessment

Activity No.: 3

Activity Description:

Evaluate the functions of the delineated wetlands.

For each wetland, provide a detailed description of its character, which may include the following:

- size;
- contiguity (e.g., perched, joined);
- vegetative structural diversity;
- edge relationships (e.g., types of land uses that occur bordering each affected wetland);
- wildlife habitat value;
- hydrologic functions (e.g., flood/erosion control, groundwater recharge/discharge);
- potential public use of each wetland (e.g., recreational, public water supply, scientific); and
- integrity (e.g., physical alterations resulting from human activities).

Regulations/Guidance

FHWA Environmental Guidebook
[FHWA Technical Advisory T6640.8A](#)

PROJECT ACTIVITY

Activity Title: Submit Documents to USACE for Jurisdictional Determination

Activity No.: 4

Activity Description:

Submit documentation of the wetland delineation/classification to the USACE District with a request for a jurisdictional determination. The USACE provides the final jurisdictional determination.

PROJECT ACTIVITY

Activity Title: Evaluate Project Impacts

Activity No.: 5

Activity Description:

The Environmental Services Division will evaluate and describe the effects of the proposed project alternatives on wetlands and waters of the US in the project area. The evaluation will address both the importance of the affected wetlands/waters of the US and the severity of the impacts. The evaluation of impacts will consider the short- and long-term effects on the wetlands/waters of the US and the importance of any loss such as:

- flood control capacity,
- water pollution abatement capacity, and
- fish and wildlife habitat value.

Regulations/Guidance

FHWA Environmental Guidebook
[FHWA Technical Advisory T6640.8A](#)
40 CFR Part 230 "Section 404(b)(1) Guidelines"

PROJECT ACTIVITY

Activity Title: Determine Avoidance/Minimization Measures

Activity No.: 6

Activity Description:

Identify and document practicable measures to avoid or minimize harm to each wetland and water of the US:

1. Avoidance Measures. Avoidance measures involve determining alternatives that avoid impacts to wetlands and waters of the US.
2. Minimization Measures. Impact minimization measures include:
 - design modifications that reduce the project's involvement with wetlands and waters of the US, and
 - the use of standard practices in the NDOT *Standard Specifications for Road and Bridge Construction* to minimize the effects to wetlands and waters of the US during construction.

The Environmental Services Division will take into account relevant environmental and economic factors when assessing the practicality and feasibility of avoidance and minimization measures.

Regulations/Guidance

DOT Order 5660.1A "Preservation of the Nation's Wetlands"
23 CFR Part 777 "Mitigation of Impacts to Wetlands and Natural Habitat"
FHWA Environmental Guidebook
[FHWA Technical Advisory T6640.8A](#)

PROJECT ACTIVITY

Activity Title: Prepare Mitigation Plan and Submit Application

Activity No.: 7

Activity Description:

A conceptual mitigation plan for wetland impacts will be developed consistent with the guidelines contained in the FHWA publication *A Guide to Wetland Functional Design*, latest edition. In determining the appropriate mitigation to be implemented, the Department will consider the following:

- functional capacity of the impacted wetland,
- potential for functional improvement to the impacted site,
- potential for functional improvement to the mitigation site, and
- function and value criteria for the mitigation site.

The mitigation plan may include:

- wetland restoration, creation or enhancement;
- preservation of existing wetlands; and/or
- mitigation banking.

The Environmental Services Division, in consultation with the USACE District Office, will make a determination as to the type of Section 404 permit appropriate for discharges of dredge or fill material into jurisdictional wetlands and waters of the US. The Environmental Services Division will submit the mitigation plan to the USACE with the Section 404 permit application.

See [Section 14.2](#) for information on the Section 404 permit procedures.

Regulations/Guidance

FHWA Policy Statement, April 20, 1990
23 CFR 777.141 "Other Considerations"

Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, Department of Army, USEPA, Department of Agriculture, Department of the Interior, Department of Commerce, November, 1995

PROJECT ACTIVITY

Activity Title: Initiate Interagency Coordination

Activity No.: 8

Activity Description:

The Environmental Services Division will coordinate the proposed solution, avoidance, minimization and mitigation plan, with the Federal, State and local regulatory and resource agencies with jurisdiction and expertise concerning wetlands and waters of the US, and wetland enhancement and/or creation options.

Regulations/Guidance

FHWA Environmental Guidebook

[FHWA Technical Advisory T6640.8A](#)

DOT Order 5660.1A "Preservation of the Nation's Wetlands"

PROJECT ACTIVITY

Activity Title: Accomplish NEPA Compliance

Activity No.: 9

Activity Description:

The environmental document will include a summary of the wetlands/waters of the US impacted and any associated mitigation.

Include a discussion on the following in the wetlands/waters of the US section of the NEPA document:

- description of the existing wetlands/waters of the US;
- description of the project impacts; and
- description of the minimization and mitigation measures, including:
 - + acreage ratio,
 - + type of wetlands to be constructed or enhanced,
 - + method of construction/enhancement,
 - + functions and values objectives, and
 - + a monitoring plan.

See [Chapter 6](#), [Chapter 7](#) and [Chapter 8](#), respectively, for information on preparing a CE, EA or EIS.

See [Section 14.2](#) for Section 404 permitting procedures, which also require NEPA compliance.

Regulations/Guidance

23 CFR Part 771 "Environmental Impact and Related Procedures"

FHWA Environmental Guidebook

[FHWA Technical Advisory T6640.8A](#)

NDOT NEPA/404 "Merger Agreement"

[Section 2.3](#) Preparing An Administrative Record

PROJECT ACTIVITY

Activity Title: Ensure Follow-Through on Mitigation Commitments

Activity No.: 10

Activity Description:

The Environmental Services Division will coordinate with the Project Manager, Resident Engineer and/or design engineers to ensure that permit conditions and avoidance, minimization and mitigation measures to address the project's impacts to wetlands/waters of the US are reflected in the Construction Contract Documents.

During and after the project's construction, the Environmental Services Division will monitor the activities to ensure fulfillment of avoidance, minimization and mitigation commitments and compliance with applicable permit conditions, including timely completion of any agreed to mitigation reports, documents, etc.

[Figure 2.4-A](#) provides a sample Environmental Commitment Checklist.

14.1.1 Wetland Finding

If the preferred alternative for a project will involve new construction in wetlands, include a "Wetlands Finding" section in the environmental document pursuant to Executive Order 11990 (EO 11990) and DOT Order 5660.1A.

14.2 SECTION 404 PERMITTING PROCEDURES

Section 404 of the *Clean Water Act* requires a permit from the USACE prior to discharging dredged or fill material into waters of the US, including wetlands. The discharge of all other pollutants into waters of the US is regulated under the *Clean Water Act*, Section 401, Water Quality Certification (see [Section 14.3](#)) and Section 402, National Pollutant Discharge Elimination System (NPDES) (see [Chapter 15 "Storm Water"](#)). The NDOT activities that require a Section 404 Permit include:

- depositing fill, dredged or excavated material in waters of the US, including wetlands;
- grading or mechanized land clearing of wetlands (including moving soil during vegetation clearing);
- restoring wetlands/waters of the US and streams (where dredging or fill is involved); and
- reconstructing or replacing bridge abutments below the ordinary high water mark of surface waters.

As a part of the permitting process, the USACE will involve other interested/affected agencies including the USEPA, the USFWS and the NDEP.

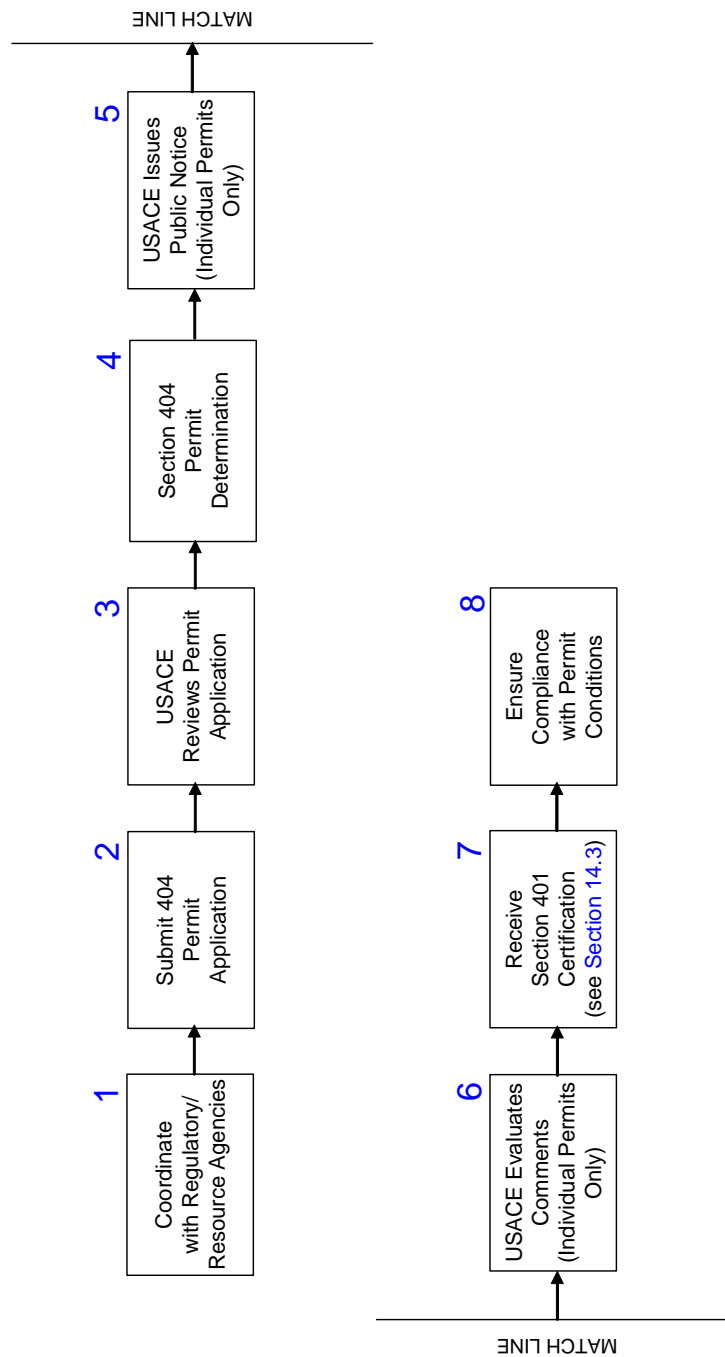


Figure 14.2-A — SECTION 404 PERMITTING PROCEDURES

PROJECT ACTIVITY

Activity Title: Coordinate with Regulatory/Resource Agencies

Activity No.: 1

Activity Description:

The Environmental Services Division will coordinate with the USACE District Office and other regulatory and resource agencies that may have an interest in the proposed project.

The Environmental Services Division will provide information concerning the project's involvement with waters of the US, including wetlands, to the USACE and the other regulatory and resource agencies

After completion of the NEPA process, the NDOT will proceed with the permitting process. Where an individual permit may be required, in some instances, the NDOT may request a pre-application meeting with the USACE. Other agency representatives may attend, including the USEPA, the USFWS, the NDEP and/or local agency representatives.

Regulations/Guidance

Clean Water Act

“Pre-Application Meeting Recommendations for the Sacramento Region.” Available on the Sacramento Corps District website.

PROJECT ACTIVITY

Activity Title: Submit 404 Permit Application

Activity No.: 2

Activity Description:

The Environmental Services Division will submit a Section 404 permit application to the USACE District Office when work on the project design has progressed sufficiently to provide the detailed information required in the application.

Information required for the application includes the following:

- project location, including vicinity map and plan view;
- approximate dimensions of structures (e.g., wingwalls, dikes) or excavations;
- types of material being discharged and the amount of each type, in cubic yards;
- surface area, in acres, of wetlands/waters of the US or other waters filled and the quantity of fill to be placed below the ordinary high water mark;
- typical cross section;
- name of each affected water body;
- names and addresses of adjoining property owners, lessees, etc., whose property adjoins the project site; and
- if applicable, type of wetlands to be affected, including area in acres, possible mitigation alternatives and comments received from regulatory and resource agencies.

The Environmental Services Division will submit the permit application to the USACE and provide a copy to the NDEP for Section 401 Water Quality Certification. See [Section 14.3](#) for Section 401 Water Quality Certification procedures.

Regulations/Guidance

33 CFR Part 325 "Processing of Department of the Army Permits"

PROJECT ACTIVITY

Activity Title: USACE Reviews Permit Application

Activity No.: 3

Activity Description:

Upon receipt, the USACE District Office reviews the permit application for completeness. If the USACE District determines that the permit application is incomplete, it will request more information from the Environmental Services Division.

Regulations/Guidance

33 CFR Part 325 "Processing of Department of the Army Permits"

PROJECT ACTIVITY

Activity Title: Section 404 Permit Determination

Activity No.: 4

Activity Description:

The Environmental Services Division, in coordination with the USACE District Office, will evaluate work involving discharge of dredged or fill material into waters of the US, including wetlands, to determine the appropriate level of Section 404 permit for the work. The Environmental Services Division will first evaluate eligibility for use of a Nationwide Permit (NWP).

An activity is authorized under a NWP if the terms and conditions of the NWP have been satisfied. The Environmental Services Division will coordinate with the appropriate USACE District Office regarding proposed use of the NWPs and will provide a copy of the notification to the NDEP to initiate the process for obtaining Section 401 Water Quality Certification for the proposed work. When notification is required as a condition of the permit, the Environmental Services Division will ensure the notification includes the required items of information, in accordance with the "Notification" general condition, and will ensure that the work requiring the permit does not proceed until the response from the USACE, and the Section 401 Water Quality Certification has been received. The NDOT most often uses the following NWPs:

- NWP 3 "Maintenance";
- NWP 13 "Bank Stabilization";
- NWP 14 "Linear Transportation Projects"; and
- NWP 33 "Temporary Construction, Access and Dewatering."

Regulations/Guidance

33 CFR Part 330 "Nationwide Permit Program"

PROJECT ACTIVITY

Activity Title: USACE Issues Public Notice (Individual Permits Only)

Activity No.: 5

Activity Description:

The USACE District Office will issue a public notice for Individual Permits advising interested parties (e.g., resource agencies, public entities) of the proposed project for which a permit is sought. The public notice will solicit comments and information necessary to evaluate the probable impact of the proposed project. The notice will include sufficient information to give a clear understanding of the nature and magnitude of the activity.

A paragraph describing the various evaluation factors on which decisions are based will be included in every public notice. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest.

Regulations/Guidance

33 CFR Part 325 "Processing of Department of the Army Permits"

PROJECT ACTIVITY

Activity Title: USACE Evaluates Comments (Individual Permits Only)

Activity No.: 6

Activity Description:

The USACE District Office will evaluate comments received in response to the Public Notice and will develop special conditions to Section 404 Individual Permits when certain conditions are necessary to satisfy legal requirements (e.g., historic sites, threatened and endangered species) or to otherwise satisfy the public interest requirement. Permit conditions will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable. Legal requirements include compliance with the 404(b)(1) guidelines, the *Endangered Species Act* and requirements imposed by conditions on State Section 401 water quality certifications.

Regulations/Guidance

33 CFR Part 325 "Processing of Department of the Army Permits"
40 CFR Part 230 "Section 404(b)(1) Guidelines"

PROJECT ACTIVITY

Activity Title: Receive Section 401 Certification

Activity No.: 7

Activity Description:

The NDEP will issue 401 Certification with applicable conditions and requirements to ensure the permitted activity will not violate State water quality standards. See [Section 14.3](#) for information on Section 401 Certification procedures.

Regulations/Guidance

Clean Water Act, Section 401
33 CFR Part 325 "Processing of Department of the Army Permits"

PROJECT ACTIVITY

Activity Title: Ensure Compliance with Permit Conditions

Activity No.: 8

Activity Description:

The Environmental Services Division will coordinate with the Project Manager, Resident Engineer and/or design engineers to ensure that stipulations necessary for compliance with applicable permit conditions are appropriately reflected in the Construction Contract Documents.

During and after the project's construction, the Environmental Services Division will monitor the activities to ensure fulfillment of all applicable permit conditions.

See [Chapter 2](#) for information on complying with permit conditions during project development.

14.3 SECTION 401 WATER QUALITY CERTIFICATION

Projects requiring a Section 404 Permit (see [Section 14.2](#)) also will have State certification that the proposed activity will not contribute to or cause violations of State and Federal water quality standards. The Water Quality Certification decision will consider the following:

1. Beneficial Uses of Water. Beneficial uses of water are benefits to aquatic life, agriculture, recreation, water supply, industrial supply and propagation of wildlife and must be protected.
2. Water Quality Standards. Water quality standards are numeric and narrative limits or bans on substances or processes that alter concentrations of dissolved oxygen, temperature and turbidity. See the NDOT *Storm Water Quality Manuals Planning and Design Guide* and *Construction Site Best Management Practices*.
3. Anti-Degradation. Anti-degradation requires that surface waters whose quality is higher than the applicable standards will be protected.

The Nevada Division of Environmental Protection (NDEP) is responsible for issuing Water Quality Certification for activities in Nevada. The Section 401 Certification includes special conditions to remove or mitigate potential impacts to water quality standards.



Figure 14.3-A — SECTION 401 WATER QUALITY CERTIFICATION PROCESS

PROJECT ACTIVITY

Activity Title: Provide 401 Certification Application to NDEP

Activity No.: 1

Activity Description:

Copy the NDEP on all Section 404 permit application submittals to the USACE. The NDEP will initiate the Section 401 Certification process in response to receipt of the permit application.

Regulations and Guidance

Clean Water Act, Section 401

PROJECT ACTIVITY

Activity Title: NDEP Response to 401 Certification Application

Activity No.: 2

Activity Description:

The NDEP may respond to the 401 Certification application in one of the following ways:

1. Waiver. Under Federal law, the NDEP may waive its certification authority if it takes no action on an application within a "reasonable time", not to exceed one year. For Section 404 permit projects, the USACE has defined "reasonable time" to be 60 calendar days, starting with the date of receipt of a complete application by the NDEP, but may extend this period up to one year on a case-by-case basis. Waivers carry no conditions and are, in some ways, equivalent to issuance of a certification without conditions.
2. Certification. Certification is based on a finding that the proposed Section 404 discharge will comply with pertinent water quality standards. To allow certification, special conditions may be required by the NDEP to remove or mitigate potential impacts to water quality standards. Such conditions will be included in the Federal Section 404 permit and the NDEP will provide a copy of its response to the appropriate USACE District(s).
3. Denial. The NDEP has the option to deny certification if it is unable to find that the project will comply with water quality standards or other applicable requirements. If a project is denied certification, a Section 404 permit for the action cannot be issued by the USACE.

Regulations and Guidance

Clean Water Act, Section 401, "Water Quality Certification." Available on the NDEP website.

PROJECT ACTIVITY

Activity Title: Prepare/Submit Special Provisions

Activity No.: 3

Activity Description:

Most 401 Certifications do not require special provisions or changes in the Construction Contract Documents. When they are necessary, the Environmental Services Division will prepare the Special Provisions for incorporating measures to remove or mitigate potential impacts to water quality standards. These may include, but are not limited to:

- seasonal limits on when work can be performed,
- incorporation of water pollution controls/Best Management Practices (BMPs), and
- treatment of water impacted by sediment prior to release.

Water quality monitoring upstream and downstream of the work also may be implemented to ascertain whether the project is impacting the receiving water. The Environmental Services Division will submit the Special Provisions to the Roadway Design Division and will ensure they are included in the Construction Contract Documents.

Regulations and Guidance

NDOT Storm Water Quality Manuals - Planning and Design Guide and Construction Site Best Management Practices

PROJECT ACTIVITY

Activity Title: Obtain Photos of BMPs

Activity No.: 4

Activity Description:

The Resident Engineer administering the proposed project is responsible for providing photos of the BMPs in place on the construction site to the Environmental Services Division.

PROJECT ACTIVITY	
<u>Activity Title:</u>	Provide Photos to NDEP
<u>Activity No.:</u>	5
<p><u>Activity Description:</u></p> <p>The Environmental Services Division will prepare a letter describing the project and the associated BMPs. The Environmental Services Division will forward to the NDEP the letter and photos of the BMPs in place to provide proof of compliance.</p>	

