

404/401/ALPO/ALCO PROCESS FOR MAINTENANCE

1. Purpose

This work instruction describes the process for ensuring maintenance projects that affect surface water resources are in full compliance with the requirements of the following directives:

- Section 404 of the *Clean Water Act (CWA)*. Requires permit coverage from the US Army Corps of Engineers (COE) for discharge of dredged or fill material into “waters of the United States,” including jurisdictional wetlands and special aquatic sites. The term “waters of the United States” is defined in 33 CFR 328. The term “special aquatic sites” is defined in 40 CFR 230.3(q-1). A CWA 404 permit can be either a nationwide permit (NWP) or an individual permit (IP). An IP requires alternative analysis (outlined in the Section 404(b)(1) guidelines, 40 CFR 230) and permitting of the Least Environmentally Damaging Practicable Alternative (LEDPA). The COE is required to demonstrate *National Environmental Policy Act (NEPA)* compliance with issuance of their permits and generally relies upon the MDT/FHWA NEPA process for this compliance.
- Section 401 of the *CWA*. Requires certification of compliance with applicable effluent limitations and water quality standards for waters of the US. Depending on the location of the water of the US, 401 certification authority will lie with the Montana Department of Environmental Quality (DEQ), US Environmental Protection Agency (EPA), Confederated Salish and Kootenai Tribes (CSKT), Fort Peck Tribes or the Northern Cheyenne Tribes. CWA 401 certification conditions from each entity are outlined on the Omaha COE District webpage.
- Blackfeet Tribe Aquatic Lands Protection Ordinance 90-A (ALPO). Requires permit coverage from the Blackfeet Nation Environmental Office for all construction or fill projects that occur in waters, aquatic lands, riparian areas and streams on the Blackfeet Indian Reservation. For purposes of ALPO, “aquatic lands” means all Reservation waters below the mean annual high water mark or within a wetland. “Reservation waters” means, all naturally occurring bodies of water within the exterior boundaries of the Reservation regardless of alteration by man, including, but not limited to, lakes, rivers, streams (including intermittent streams), mudflats, wetlands, springs, sloughs, potholes and ponds, and any bodies of water classifiable as waters of the US under Federal law. Tributaries and wetlands are also Reservation waters.
- CSKT Aquatic Lands Conservation Ordinance 87-A (ALCO). Requires permit coverage from the Shoreline Protection Program Office of the CSKT for any proposed work in, over or near any stream, river, lake or wetland on the Flathead Reservation. For purposes of ALCO, “aquatic lands” means all land below the mean annual high water mark of a Reservation water body. “Reservation waters” means, all naturally occurring bodies of water within the exterior boundaries of

the Reservation regardless of alteration by man, including, but not limited to, lakes, rivers, streams (including intermittent streams), mudflats, wetlands, sloughs, potholes and ponds from which fish and wildlife are or could be taken, but does not include wholly manmade water bodies. Tributaries to waters identified above are Reservation waters. Adjacent wetlands are also Reservation waters.

2. Scope

The District Environmental Engineering Specialists (DEES) administer the 404/401/ALPO/ALCO process for maintenance actions, in cooperation with other MDT Sections, including those within the Environmental Services Bureau (ESB), as applicable. The process begins when the Maintenance Division contacts the DEES to provide information on a proposed maintenance project that will affect surface water resources. The process is completed with the implementation of permit conditions and/or Section 401 water quality certification conditions associated with the maintenance project.

3. Process

[Figure 1](#) presents a flowchart that illustrates the 404/401/ALPO/ALCO process for maintenance projects. Following the Figure is a description of each process task included within the flowchart.

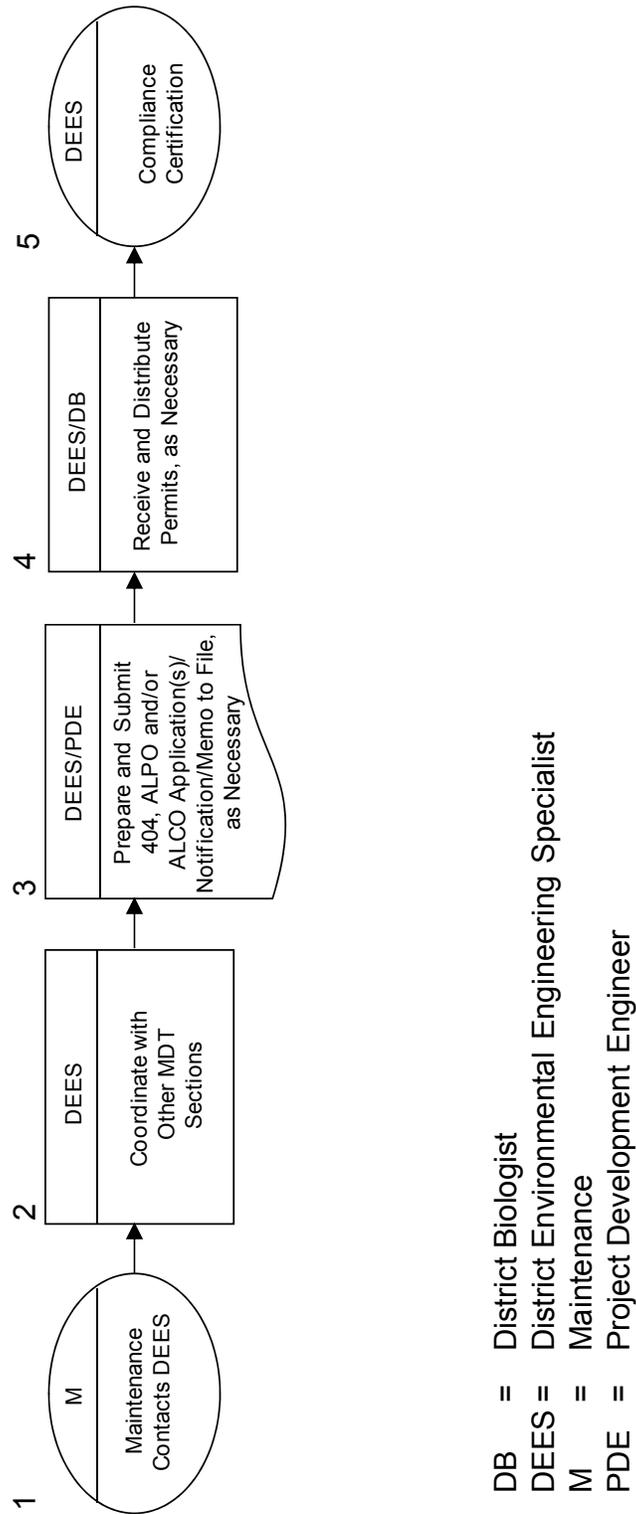


Figure 1 — 404/401/ALPO/ALCO PROCESS (Maintenance)

PROCESS TASK

Task Title: Maintenance Contacts DEES

Task No.: 1

Task Description:

When the Maintenance Division determines that a maintenance action will affect surface water resources, it notifies the appropriate DEES. The notification may be by e-mail, memorandum or telephone.

PROCESS TASK

Task Title: Coordinate with Other MDT Sections

Task No.: 2

Task Description:

In response to the notification from Maintenance, the DEES coordinates with other MDT Sections (e.g., Maintenance, Environmental Services) to obtain information necessary for determining permit applicability and completing applications for permits needed for the maintenance project. This may include the Joint Application Form for a Section 404 permit and Section 401 water quality certification and/or applications for an ALPO permit and/or an ALCO permit. If the activities fall under a NWP that will not require notification to the COE, or are covered by a codified permitting exemption, the DEES prepares a memo or e-mail to the Maintenance personnel describing applicable conditions. The DEES ensures the District Biologist (DB), Project Development Engineer (PDE) and Environmental Engineering Section Supervisor (EES) are copied.

The DEES also coordinates with the DB and PDE in ESB to contact resource agencies, review available environmental data and conduct any necessary fieldwork to gather information on fish and wildlife resources and other environmental concerns associated with affected water bodies.

Regulations and Guidance

Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies
Confederated Salish & Kootenai Tribes, Shoreline Protection Office, *Tribal Application for the Alteration of Aquatic Land or Wetland on the Flathead Reservation*

PROCESS TASK

Task Title: Prepare and Submit 404, ALPO and/or ALCO Applications(s)/Notification/Memo to File, as Necessary

Task No.: 3

Task Description:

Based on the determination of permits needed, the DEES prepares and submits permit applications according to the following procedures. The permitting process varies depending on the location within the State.

The COE, Montana Department of Fish, Wildlife and Parks (FWP), DEQ, EPA and the various Tribes have differing permit authorities and different waters where they have jurisdiction. However, applications for CWA 404, Tribal permits and SPA 124 Notifications, secured by the DEES and DB for maintenance work, contain some similar information. As a result, coordination and collaboration between the DEES and the PDE/DB prior to submittal of applications is necessary. The DEES and PDE/DB conduct a mutual review of the permit and the notification applications prior to submittal to the various agencies.

Non-Tribal Land

404 Permit: When a NWP is applicable, the DEES reviews the NWP notification requirements to determine if an application submittal is required. If notification is required, whether for a NWP or an IP, the DEES prepares and submits a "Joint Application for Proposed Work in Montana's Streams, Wetlands and Other Water Bodies," along with appropriate supporting information and attachments, to the PDE for review. The DEES prepares the application packet in accordance with the current templates. The PDE provides input, as necessary, to the DEES regarding the application. The DEES submits the Joint Application to the EESS for signature and submittal to COE. The EESS tracks the submittal in the appropriate tracking spreadsheet and guides the COE as to the priority of the application in relation to other MDT permit applications currently being processed by the COE.

NWP processing time by the COE is approximately 45 days when notification is required. IP processing time by the COE is approximately 120 days.

401 Certification: The 401 certification is issued by DEQ. Generally, this process is coordinated between DEQ and the COE. The DEES assists Maintenance in reviewing and ensuring compliance with DEQ 401 certification requirements, which vary depending on type of NWP.

PROCESS TASK

Task Title: Prepare and Submit 404, ALPO and/or ALCO Applications(s)/Notification/Memo to File, as Necessary (Continued)

Task No.: 3

Task Description: (continued)

Tribal Land

If discharge(s) of dredged or fill material into waters of the United States occur within Tribal lands other than the Blackfeet, Flathead, Fort Peck or Northern Cheyenne Reservations, the 404 permit application information is submitted only to the COE. No additional submittals for Tribal permits or Tribal water quality certification are required.

If the discharges involve waters within the Blackfeet, Flathead, Fort Peck or Northern Cheyenne Reservations, additional requirements apply as described below.

Tribal Lands Other Than the Blackfeet, Flathead, Fort Peck or Northern Cheyenne Reservations

404 Permit: Apply to COE. (See above.)

401 Certification for NWP: Check EPA Tribal Lands Certification for 401 certification requirements. EPA issues the 401 certification, when required. This process generally is coordinated between the COE and EPA. The DEES assists Maintenance in reviewing and ensuring compliance with EPA 401 certification requirements, which vary depending on type of NWP.

401 Certification for IP: EPA issues the 401 certification. This process generally is coordinated between the COE and EPA.

Blackfeet Nation – ALPO Permit

404 Permit: Apply to COE. (See above.)

401 Certification for NWP: Check EPA Tribal Lands Certification for 401 certification requirements.

401 Certification for IP: COE contacts EPA directly for 401 certification.

PROCESS TASK

Task Title: Prepare and Submit 404, ALPO and/or ALCO Applications(s)/Notification/Memo to File, as Necessary
(Continued)

Task No.: 3

Task Description: (continued)

ALPO: Apply to Blackfeet Nation Environmental Office. The Maintenance Superintendent/Section Supervisor or DEES contacts the PDE to compare the proposed project with ALPO 90-A regulations. The PDE coordinates with the Blackfeet Tribe directly to thoroughly explain the proposed activities and determine permit applicability. The PDE and DEES coordinate to complete the application submittal in accordance with the ALPO 90-A regulations and specific needs or concerns identified by the Tribe during consultation. The PDE submits the application package directly to the Blackfeet Environmental Office and conducts follow-up efforts necessary to secure the permit.

Flathead Indian Reservation – ALCO Permit

404 Permit: Apply to COE. (See above.)

401 Certification for NWP: Check CSKT Certification for 401 certification requirements.

401 Certification for IP: Apply to CSKT for 401 certification.

ALCO: Apply to CSKT Shoreline Protection Office and the CSKT Tribal Water Quality Program. The DEES contacts the PDE to compare the proposed project with ALCO requirements. The PDE and DEES coordinate to complete the application package in accordance with the ALCO requirements, available on the CSKT website.

Fort Peck Indian Reservation

404 Permit: Apply to COE. (See above.)

401 Certification for NWP: Check Fort Peck Tribes Certification for 401 certification requirements. The 401 certification is issued by the Fort Peck Tribes. Generally, this process is coordinated between the COE and the Tribes.

401 Certification for IP: Apply to Fort Peck Tribes for 401 certification. The DEES submits the application to the EESS, who submits the 404 permit application information to the Fort Peck Office of Environmental Protection with a request for 401 water quality certification.

PROCESS TASK

Task Title: Prepare and Submit 404, ALPO and/or ALCO Applications(s)/Notification/Memo to File, as Necessary
(Continued)

Task No.: 3

Task Description: (continued)

Northern Cheyenne Reservation

404 Permit: Apply to COE. (See above.)

401 Certification for NWP: Check Northern Cheyenne Tribes Certification for 401 certification requirements. The 401 certification is issued by the Northern Cheyenne Tribes. Generally, this process is coordinated between the COE and the Tribes.

401 Certification for IP: Apply to Northern Cheyenne Tribes for 401 certification. The DEES submits the application to the EESS, who submits the 404 permit application information to the Northern Cheyenne Tribes with a request for 401 water quality certification.

Regulations and Guidance

Montana Stream Protection Act (MCA 87-5-501, et seq.)

Joint Application for Proposed Work in Montana's Streams, Wetlands, Floodplains, and Other Water Bodies

Confederated Salish & Kootenai Tribes, Shoreline Protection Office, Tribal Application for the Alteration of Aquatic Land or Wetland on the Flathead Reservation

PROCESS TASK

Task Title: Receive and Distribute Permits, As Necessary

Task No.: 4

Task Description:

Upon receipt of any required 404, ALPO and/or ALCO permits and associated 401 water quality certification for the proposed maintenance project, the DEES and DB coordinate to ensure that other necessary permits (e.g., SPA 124, 318 authorization) have been received prior to distribution to Maintenance personnel. The DEES ensures that the permit package includes the NWP Fact Sheet for Maintenance, the Montana NWP Regional Conditions and 401 certification requirements.

Maintenance review of and comment on the permit may necessitate renegotiation of permit conditions. If so, the DEES and/or DB coordinates with the agencies and secures the necessary permit modifications. As necessary, the renegotiated permit is redistributed for further comment by Maintenance.

The original permit and water quality certification conditions are maintained in ESB files.

PROCESS TASK

Task Title: Compliance Certification

Task No.: 5

Task Description:

The DEES coordinates with Maintenance to ensure conditions associated with the 404 permit, 401 water quality certification, ALPO permit and/or ALCO permit are implemented during the Maintenance project.

Once the maintenance project is complete and the conditions of the permits are satisfied, the District Maintenance Chief or Superintendent completes the 404 compliance certification and provides a copy to the EESS. The EESS tracks the compliance certification in the appropriate tracking spreadsheet and submits the compliance certification form to the COE.

