

404/401/ALPO/ALCO/SPA 124 PROCESS FOR TEMPORARY FACILITIES

1. Purpose

This work instruction describes the process for ensuring that temporary facilities associated with construction projects 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.
- Blackfoot Tribe Aquatic Lands Protection Ordinance 90-A (ALPO). Requires permit coverage from the Blackfoot Nation Environmental Office for all construction or fill projects that occur in waters, aquatic lands, riparian areas and streams on the Blackfoot 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.

- MCA 87-5-502 Montana Stream Protection Act (SPA 124 Notification). The *Montana Stream Protection Act* requires that State agencies in Montana must provide notice to the Montana Department of Fish, Wildlife and Parks (FWP) before initiating any construction project that will affect any Montana stream or its banks or tributaries.

2. Scope

The Contractor is the permittee on temporary facilities/construction permits. As an owner of land involved with the temporary facilities/construction, MDT is generally a signatory on the permit applications. To facilitate timely responses by permitting agencies, MDT assists the Contractor in the permitting process. The Contractor prepares the permit applications and the District Environmental Engineering Specialist (DEES) reviews the applications in cooperation with other MDT Sections, including those within the Environmental Services Bureau (ESB), as applicable. The process begins when the Engineering Project Manager (EPM) or the Contractor contacts the DEES and/or ESB to provide information on proposed temporary construction facilities 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 temporary facilities.

3. Process

[Figure 1](#) presents a flowchart that illustrates the 404/401/ALPO/ALCO/SPA 124 process for temporary facilities. Following the Figure is a description of each process task included within the flowchart.

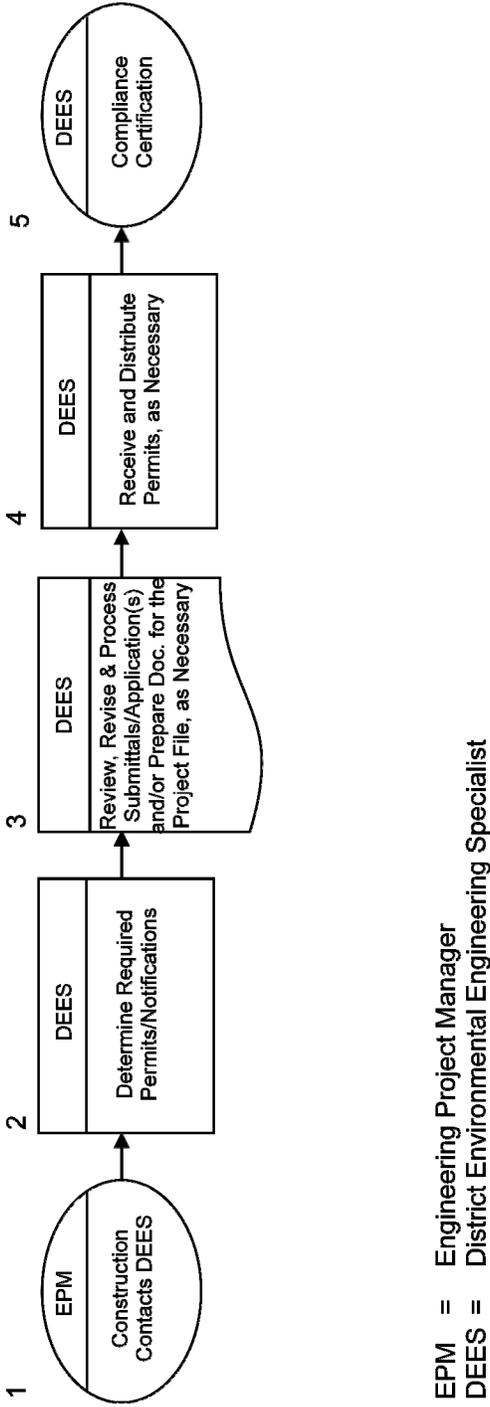


Figure 1 — 404/401/ALPO/ALCO/SPA 124 PROCESS (Temporary Facilities)

PROCESS TASK

Task Title: Construction Contacts DEES

Task No.: 1

Task Description:

When the EPM determines that temporary construction facilities will affect surface water resources, the EPM or the Contractor notifies the appropriate DEES. The notification may be by e-mail, memorandum or telephone.

PROCESS TASK

Task Title: Determine Required Permits/Notifications

Task No.: 2

Task Description:

In response to the notification from the EPM, the DEES, in coordination with the EPM, assists the Contractor in identifying and obtaining information necessary for determining which permits/notifications are required.

The DEES may coordinate with other MDT Sections (e.g., District Biologist (DB) in ESB) to contact resource agencies, review available environmental data and conduct any necessary field work to gather information on fish and wildlife resources and other environmental concerns associated with the affected water bodies.

The Contractor is responsible for preparation of the applications for permits/notifications needed for temporary construction facilities.

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: Review, Revise and Process Submittals and Application(s) and/or Prepare Documentation for the Project File, as Necessary

Task No.: 3

Task Description:

The EPM receives the completed application(s) or submittal(s) from the Contractor, including appropriate supporting information and attachments, and forwards them to the DEES for review.

The DEES review of Contractor submittals includes a preliminary assessment of adherence to the contract, including preconstruction permit conditions. It also includes a preliminary assessment of whether the submittal meets typical resource agency requirements and includes the information and narratives that the permitting agencies generally need to process the application(s) and issue authorization.

If the submittals are incomplete or insufficient, the DEES works with the Contractor, through the EPM, to obtain additional information or to suggest revision of the Contractor's joint application to help ensure environmental commitments are addressed and the submittal is complete. If any changes are made to the Contractor's original submittal, the DEES or EPM must either receive written or e-mail concurrence from the Contractor that the changes are acceptable or obtain a new application submittal from the Contractor. If the Contractor does not wish to modify the original application based on the DEES suggestions, the DEES documents this decision in an e-mail or memo to the EPM and the ESS.

When the DEES concludes that the Contractor's joint application package is ready for submittal, the DEES prepares appropriate cover letters in consideration of the following procedures and forwards them to the Environmental Engineering Section Supervisor (EESS). The permitting procedure and contents of the application package vary depending on the location within the State. 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.

Note: If the Contractor is required to secure a 318 authorization, the DEES may coordinate with the EPM and Contractor to help ensure consistency among all applications.

The COE, 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 contain some similar information. As a result, coordination and collaboration between the DEES and the DB prior to submittal of applications may be necessary.

PROCESS TASK

Task Title: Review, Revise and Process Submittals and Application(s) and/or Prepare Documentation for the Project File, as Necessary
(Continued)

Task No.: 3

Task Description: (Continued)

Non-Tribal Land

The DEES prepares the application cover letters in accordance with the current templates. The DEES forwards the completed cover letters and four originals of the Contractor-signed application to the EESS for signature and submission to the COE for the Section 404 permit and to the FWP for SPA 124 Notification, if applicable. COE receives one original signature application. FWP receives two original signature applications. One original signature application and copies of the signed cover letters are retained in ESB files.

NWP processing time by the COE is approximately 45 days, when notification is required. IP processing time by the COE is approximately 120 days. FWP processing time for the SPA 124 Notification can be up to 60 days.

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

Tribal Land

The DEES prepares the application package in accordance with the current templates and in consideration of the additional requirements below.

After a final review of the Contractor's application(s) by ESB, the EESS signs the application(s) on behalf of MDT, as the landowner and joint applicant. If discharge(s) of dredged or fill material involve water within Tribal lands other than the Blackfeet, Flathead, Fort Peck or Northern Cheyenne Reservations, the joint application information is submitted only to the COE District and FWP, if applicable. 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.)

PROCESS TASK

Task Title: Review, Revise and Process Submittals and Application(s) and/or Prepare Documentation for the Project File, as Necessary
(Continued)

Task No.: 3

Task Description: (Continued)

401 Certification for NWP: Check EPA Tribal Lands Certification for 401 certification requirements. EPA issues 401 certification, when required. This process generally is coordinated between the COE and EPA. The DEES assists the EPM and the Contractor 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.

SPA 124 Notification: Apply to FWP. (See above.) 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.

ALPO: Generally, the ALPO permit will cover the construction of the project (in accordance with Section 5.b of the ALPO No. 90-A Regulations). The DEES compares the proposed project temporary facilities with the preconstruction application package, coordinates with the PDE regarding potential need for an additional submittal to the Blackfeet Environmental Office. If such submittal is necessary, the DEES in consultation with the PDE and EPM may instruct the Contractor to prepare a draft submittal in accordance with the ALPO 90-A requirements. The PDE coordinates as necessary with the Blackfeet Environmental Office and makes any necessary submittals to the Blackfeet Environmental Office.

After a final review by ESB, the EESS signs the Contractor's ALPO application(s) on behalf of MDT and submits them to the Blackfeet Nation Environmental Office.

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: The ESB submits a copy of the 404 permit application information to CSKT with a request for 401 water quality certification.

PROCESS TASK

Task Title: Review, Revise and Process Submittals and Application(s) and/or Prepare Documentation for the Project File, as Necessary
(Continued)

Task No.: 3

Task Description: (Continued)

ALCO: The DEES compares the proposed project temporary facilities with permanent facilities application submittals and assists the Contractor in completing the application package in accordance with the ALCO requirements, available on the CSKT website.

After a final review by ESB, the EESS signs the contractor's ALCO application(s) on behalf of MDT and submits them to CSKT Shoreline Protection Office and the CSKT Tribal Water Quality Program.

Fort Peck Indian Reservation

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

401 Certification for NWP: Check the Fort Peck Tribes Certification for 401 certification requirements. As applicable, ESB submits the 404 permit application information to the Fort Peck Office of Environmental Protection with a request for 401 water quality certification.

401 Certification for IP: The ESB submits a copy of the 404 permit application information to the Fort Peck Office of Environmental Protection with a request for 401 water quality certification.

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: The ESB submits a copy of 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 all required SPA 124 Notifications and 404, ALPO and/or ALCO permits and associated 401 water quality certification for the proposed temporary facilities, the EESS tracks the receipt of the permit(s) in the appropriate tracking spreadsheet, prepares a distribution memo, electronically scans the memo and permit(s)/notification(s). The EESS distributes via e-mail or hardcopy to the EPM, Construction Bureau, Contractor, District Administrator, DEES, ESB Bureau Chief and others.

Comments on the permit may necessitate renegotiation of permit conditions. If so, the DEES coordinates with the EPM, Contractor, ESB and/or permitting agencies to secure the necessary permit modifications. As necessary, the EESS redistributes the renegotiated permit for further comment.

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

PROCESS TASK

Task Title: Compliance Certification

Task No.: 5

Task Description:

The DEES coordinates with the EPM to ensure conditions associated with the 404 permit, 401 water quality certification, ALPO permit and/or ALCO permit and SPA 124 Notification are implemented for the temporary construction facilities.

Once the construction work involving the temporary facilities is complete and the conditions of the permits are satisfied, the Contractor completes the 404 compliance certification and provides a copy to EESS. The EESS tracks the compliance certification in the appropriate tracking spreadsheet and submits the compliance certification form to the COE.

