

## Part 610 – National Environmental Compliance Handbook

### **CLEAN WATER ACT/WATERS OF THE UNITED STATES EVALUATION PROCEDURE GUIDE SHEET**

**Note:** This guide sheet should be tailored to meet the specific needs of individual State and local regulatory and permitting requirements. It is important for each State to coordinate with their individual State and Federal regulatory agencies to tailor State-specific protocols in order to prevent significant delays in processing permit applications.

**Complete both sections of this guide sheet in order to address Federal as well as State-administered regulatory requirements of the Clean Water Act.**

#### **SECTION 1**

##### **FEDERALLY ADMINISTERED REGULATORY PROGRAM – SECTION 404 OF THE CWA**

#### **STEP 1**

Will the proposed action or alternative involve or likely result in the discharge of dredged or fill material or other pollutants into waters of the United States? *More detailed information regarding waters of the United States and Federal permitting programs under CWA is found in the NECH 610.22.*

**If "No," document this on the NRCS-CPA-52 and proceed with Section II below.**

**If "Yes," go to Step 4.**

**If "Unknown,"** refer to your FOTG or contact your NRCS environmental liaison for assistance. Inform the client early on that they may need to contact the appropriate U.S. Army Corps of Engineers (COE) office to determine if the proposed action or alternative will require a permit. **Repeat Step 1.**

#### **STEP 2**

Is the proposed action or alternative an activity exempt from section 404 regulation (40 CFR Part 232)?

*(Note: the exemption should be verified with the local COE district).*

**If "No," go to Step 4.**

**If "Yes," document this on the NRCS-CPA-52 and proceed with Section II below.**

#### **STEP 3**

Can the action or alternatives be modified to avoid the discharge of dredged or fill material or other pollutants into waters of the United States?

**If "No," go to Step 4.**

**If "Yes," modify the action to avoid discharge. Document this on the NRCS-CPA-52 and proceed with Section II below.**

#### **STEP 4**

Has the client obtained a section 404 permit (individual, regional, or nationwide) or a determination of an exemption from the appropriate COE office?

**If "No,"** determine if the client has applied for a permit. If a permit has not been applied for, the client will need to do so. If a permit has been applied for, document this, and continue the planning process in consultation with the client and the regulatory agencies. The permit authorization should be reflected in the final plan and documentation. **Continue planning, but a permit is required prior to implementation. Complete Section II below.**

**If "Yes," document this on the NRCS-CPA-52 and complete Section II below.** The final plan should not be contrary to the provisions of the permit authorization or exemption. Changes made during the planning process that may impact the applicability of the permit, such as amount or location of fills or discharges of pollutants should be coordinated with the COE.

**If "Unknown,"** meaning that you do not know if authorization has been obtained or applied for, consult with the client and **repeat Step 2.**

### **SECTION II**

#### **STATE ADMINISTERED REGULATORY PROGRAMS - SECTIONS 303(D) AND 402 OF CWA**

#### **STEP 1**

Is the proposed action or alternative located in proximity to waters listed by the State as "impaired" under section 303(d) of the CWA?

**If "No," document this on the NRCS-CPA-52 and proceed to Step 2.**

**If "Yes,"** review and comply with any existing TMDLs or associated State watershed action plans that have been established by the State for that stream segment. However, even if TMDLs have not been established by the State for that stream segment, ensure that the action will not contribute to further degradation of that stream segment. **Proceed to Step 2.**

**If "Unknown,"** refer to FOTG for information regarding State designation of impaired stream segments, or contact your NRCS environmental liaison for assistance. **Repeat Step 1.**

#### **STEP 2**

Will the proposed action or alternative likely result in point-source discharges from developments, construction sites, or other areas of soil disturbance, or sewer discharges (e.g., projects involving stormwater ponds or point-source pollution, including CAFOs for which CNMPs are being developed)? *Section 402 of the CWA requires a permit for these activities through the National Pollutant Discharge Elimination System (NPDES) program, which the States administer.*

**If "No," document this on the NRCS-CPA-52 and proceed with planning.**

**If "Yes," go to Step 3.**

**If “Unknown,”** refer to your FOTG for additional information or contact your NRCS environmental liaison for assistance. Inform the client early on that they may need to contact the appropriate State regulatory office to determine if the proposed action or alternative will require a NPDES permit. **Repeat Step 2.**

**If “Unknown,”** meaning that you do not know if authorization has been obtained or applied for, consult with the client and **repeat Step 3.**

### **STEP 3**

Has the client obtained an NPDES permit or a determination of an exemption from the appropriate EPA or State-delegated regulatory office?

**If “No,”** determine if the client has applied for any necessary permits. If a permit has not been applied for, the client will need to do so. If they have applied, document this and continue the planning process in consultation with the client and the regulatory agency. Continue the planning process in consultation with the client and the regulatory agencies. The permit authorization should be reflected in the final plan and documentation. **Continue planning, but a permit is required prior to implementation.**

**If “Yes,” document this on the NRCS-CPA-52 and proceed with planning.** The final NRCS conservation plan should not be contrary to the provisions of the permit authorization or exemption. Changes made during the planning process that may impact the applicability of the permit should be coordinated with the appropriate State regulatory agency.