

STATE 401 CERTIFICATIONS

BACKGROUND

WV State Code: §22-1-6(d)(7) and §22-11-7(a)
WV Code of State Rules: 47 CSR 5A

WVDEP provides Section 401 Water Quality Certifications to complement Section 404 permits issued by the United States Army Corps of Engineers (USACE)² for projects that will result in discharge of dredged material to waters of the state. 401 certifications ensure that proposed activities will not harm water quality and that the project is in compliance with state water quality standards. Federal 404 permits must receive the state 401 certification before the federal permit can be approved.

401 certification applications must include:

- a detailed description of the project,
- identification of all wetlands in the project area,
- a description of waterways and watersheds that will be impacted,
- the area of wetlands and/or waterways that will be filled,
- dredge and fill materials (type and quantity),
- ways streams and wetland impacts have been avoided and minimized,
- an agreement to compensate for or lessen impacts if unavoidable impacts will occur, and
- a stream restoration plan.

OPPORTUNITIES FOR CITIZEN INVOLVEMENT

PUBLIC NOTICE

Applicants for projects requiring individual State 401 Certifications are required to publish a public notice in the local newspaper.

COMMENT PERIOD

The notice announces a 30-day public comment period.

PUBLIC HEARINGS

A hearing is not required; however, the public can request a hearing. If WVDEP decides to hold a hearing, all parties requesting the hearing must be notified and a Class I legal advertisement must be published.

LEGAL ACTIONS

Any person whose property is directly impacted may request a hearing to appeal the State 401 Certification decision within 15 days of the decision. WVDEP must then decide whether there are grounds for an appeal hearing.

² See resources section for more information on USACE 404 permits; federal permits are beyond the scope of this report.



WELL PAD GRADING: SITE PREPARATION FOR STONE ENERGY BOYERS WELLPAD NEAR NEW MARTINSVILLE

TIPS FOR WRITING COMMENTS

IMPORTANT THINGS TO DESCRIBE IN COMMENTS:

- Ensure all information (size of the project and streams and wetlands to be impacted for example) provided by the applicant is correct and complete.
- Assess whether the extent of wetlands and/or the length of streambed to be impacted were properly measured.
- Review the length of stream that would be impacted, duration of impacts, types of fill to be used, and cumulative impacts due to proximity to other similar projects.
- Suggest strategies to minimize and avoid impacts.
- Permit applications must include restoration plans. Review these plans, and evaluate the likelihood that these plans will restore the impacted waterways to their original condition.
- Evaluate methods used to cross streams, if any streams will be filled or culverted, and erosion and sediment control methods.
- Discuss alternative crossing methods that can reduce impacts to water quality.
- Note methods that, although possibly more costly, would lead to a final result that more closely resembles the waterway prior to impacts.