

~8. Permitting Requirements~

Work in any stream in New York State requires a permit or series of permits, depending on the nature of the project. This section briefly describes the requirements of the permitting agencies, and Stormwater Pollution Prevention Plans (SPPP) that are typically required in order to receive these permits.

NYSDEC Permit Requirements

The NYSDEC regulates activities in and around the water resources of New York State pursuant to the Environmental Conservation Law (ECL) Article 15, Title 5, Protection of Waters Program. This is known as an Article 15 Permit, and is issued to applicants at no charge.

A Protection of Waters Permit is required for temporary or permanent disturbances to the bed or banks of a stream with a classification and standard of C(T) or higher. Examples of activities requiring this permit are:

- Placement of structures in or across a stream (i.e., bridges, culverts or pipelines);
- Fill placement for bank stabilization or to isolate a work area (i.e., riprap or other forms of *revetment*);
- Excavations for gravel removal or as part of a construction activity;
- Lowering streambanks to establish a stream crossing;
- Use of heavy equipment in a stream to remove debris or to assist in-stream construction.

Some stream disturbance activities are exempt from the requirements of an Article 15 Permit. The most common of these are:

- Disturbance of a protected stream by a town or county government that enters into a written agreement with NYSDEC for specified categories of work, undertaken in compliance with performance criteria that are protective of stream resources.
- Agricultural activities involving the crossing and re-crossing of a stream by livestock or farm equipment at an established crossing.
- Removal of fallen tree limbs or tree trunks where material can be cabled and pulled from the stream without disruption of the streambed or banks, utilizing equipment placed on or above the streambank.

Projects are classified as minor or major for the purposes of review by NYSDEC. Maximum allowable review periods are different for “minor” and “major” projects under the Uniform Procedures Act requirements (6 New York Code of Rules and Regulation (NYCRR) Part 621). Minor projects include: 1) repair or in-kind replacement of existing structures; and 2) disturbances of less than 50 linear feet along any 1,000 feet of watercourse. All other activities are considered major projects for the purposes of review and public notice, as required by the Uniform Procedures Act. For minor projects,

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NYSDEC must make a permit decision within 45 days of determining the application complete. For major projects: 1) if no hearing is held, NYSDEC makes its final decision on the application within 90 days of its determination that the application is complete; and 2) if a hearing is held, NYSDEC notifies the applicant and the public of a hearing within 60 days of the completeness of determination. The hearing must commence within 90 days of the completeness determination. Once the hearing ends, NYSDEC must issue a final decision on the application within 60 days after receiving the final hearing record.

For permit applications and any questions regarding the permit process contact the Deputy Regional Permit Administrator at:

NYS Department of Environmental Conservation
Division of Environmental Permits, Region 4
65561 State Highway 10, Suite 1
Stamford, NY 12167-9503
(607) 652-7141

Protection of Waters permit information is also available on the NYSDEC website: <http://www.dec.ny.gov/permits/6042.html> (Verified September 27, 2007).

U. S. Army Corps of Engineers (USACOE) Permit Requirements

Under Section 404 of the Clean Water Act, any activities where placing fill or undertaking activities resulting in a discharge to *waters of the United States* also require a Nationwide permit from the U. S. Army Corps of Engineers (USACOE). Minor projects include those projects that will not exceed the minor project thresholds for NYSDEC Article 15 permits, and which do not involve the approval of construction and operation of hydroelectric generating facilities. All other projects are major projects and require USACOE review.

Currently, applications are a one form joint application available from the NYSDEC, which forwards a copy of the application package to the regional USACOE office. USACOE will contact the applicant if additional information is required. Information is also available from the regional USACOE office at:

Department of the Army
New York District, Corps of Engineers
Albany Field Office
1 Bond Street
Troy, NY 12180
(518) 270-0588

Erosion and Sediment Control

Stormwater Pollution Prevention Plan

A Stormwater Pollution Prevention Plan (SPPP) documents how erosion will be controlled during construction, and the project's likely effects on the rate and quality of stormwater leaving the site. An SPPP consists of a narrative report, plans, details and specifications.

NYSDEC Requirements

Generally, construction activities in the East Branch watershed that involve one acre or more of land disturbance must obtain a State Pollutant Discharge Elimination System (SPDES) permit, which includes the development of an Erosion and Sediment Control Plan and an SPPP. Operators of potential construction activities should contact the local NYSDEC office in Stamford for a determination whether or not a SPDES permit is required. Additional information is available from the NYSDEC website: <http://www.dec.ny.gov/permits/6054.html> (Verified September 27, 2007).

Implementation of certain agricultural Best Management Practices are exempt from SPDES permitting requirements pursuant to a Memorandum of Understanding (MOU) between the NYSDEC, NYS Department of Agriculture and Markets and the NYS Soil and Water Conservation Committee dated March 25, 2004.

New York City Requirements

The New York City Department of Environmental Protection (NYCDEP) requires an SPPP to be submitted and approved prior to implementation of any of the following activities:

- Development or sale of land that will result in the disturbance of five or more acres of land.
- Construction of a subdivision.
- Construction of a new industrial, municipal, commercial or multi-family residential project that will result in creation of an impervious surface totaling over 40,000 square feet in size.
- A land clearing or land grading project, involving two or more acres, located at least in part within the limiting distance of 100 feet of a watercourse or *wetland*, or within the limiting distance of 300 feet of a reservoir, reservoir stem or controlled lake or on a slope exceeding 15%.
- Construction or alteration of a solid waste management facility within 300 feet of a watercourse or wetland or within 500 feet of a reservoir, reservoir stem or controlled lake.
- Construction of a gasoline station.
- Construction of an impervious surface for a new road within certain limiting distances from various watercourses.

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- Construction of an impervious surface within a village, hamlet, village extension or area zoned for commercial or industrial uses.
- Up to a 25% expansion of an existing impervious surface at an existing commercial or industrial facility which is within the limiting distance of 100 feet of a watercourse or wetland.

Generally, installation of culverts, stream diversions and bridges or stream crossings within 100 feet of a stream or wetland, or within 300 feet of a reservoir, reservoir stem or controlled lake also require NYCDEP approval. For applications and any questions regarding this process contact the Deputy Chief, Engineering Section at:

NYCDEP
71 Smith Avenue
Kingston, NY 12401
(845) 657-2390

Local Requirements

It should be recognized that since New York is a “home rule” state, the authority to regulate development rests with the local municipalities. Communities that participate in the National Flood Insurance Program (NFIP) have adopted local laws for Flood Damage Prevention that incorporates Federal Emergency Management Agency (FEMA) minimum standards for development in a Special Flood Hazard Area. Participating communities appoint a local floodplain administrator, typically the Building Inspector or Code Enforcement Officer, to administer the program within the community. The intent of the program is, at least in part, to reduce flood risk to new development, and to prevent an increase in flood risk to the existing community from development proposed in the future. It should be noted that development as defined in the local law is: “... any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations, or storage of equipment or materials.” As such, proposed stream corridor management projects should be assessed by the affected communities, and floodplain development permits should be issued or denied as appropriate.