

There are a range of laws and executive orders that are designed to protect the nation's water resources. Over a century ago, the Rivers and Harbors Act was enacted to address the need to maintain the navigability of the nation's waterways. Under the Act, regulations and procedures were implemented to control proposed development on or around navigable channels. More recently, the Federal Water Pollution Control Act, later to be called the Clean Water Act, tackled issues associated with cleaning up and maintaining the water quality of the nation's waters by setting up a permit system under the direction of the US Army Corps of Engineers (USACE). Any entity, Federal or non-Federal, who is developing in or around "waters of the US" (which includes wetlands), is required to contact the USACE about the need for a permit. If a permit is required, it must be obtained and the permit conditions complied with.

In addition to the Clean Water Act and the Rivers and Harbors Act, many states have permitting requirements associated with work in wetlands or streams, along stream banks, or in floodplains. You should check with your state and local authorities regarding these requirements before undertaking any work in these areas.

In addition to the laws enacted by the Congress there are executive orders (EO) issued by the President that relate to actions and funding undertaken by the administrative branch of the Federal government. In particular, EO 11990, Protection of Wetlands, requires that all Federal agencies consider alternatives for proposed actions or funding of actions that would be in or otherwise adversely affect the natural or beneficial functions of wetlands. Where reasonable alternatives are not available, then minimization of impacts must be considered.

The questions and guidance in this section are designed to provide information useful in determining if your proposed project is likely to trigger any of these laws or executive orders and if so, steps and costs that might be involved in reducing the potential impacts.

D.-1 Determining if your project will affect "waters of the U.S."

"Navigable Waters of the U.S." includes all surface water bodies such as drainage ditches, intermittent streams, streams, lakes, and ponds, as well as vegetated wetlands adjacent to water bodies. Most areas where water flows or gathers (even intermittently) would be considered navigable waters of the U.S. for the purpose of this section. Any project that involves construction in or adjacent to waters of the U.S. can potentially impact the quality or function of the waters. Water quality can be impacted by physical disturbance and by the discharge of sediment, construction debris, pollutants, or other materials such as oil or other vehicle fluids. The functions of navigable waters and wetlands can be impacted by activities such as the disposal of soil and construction materials; excavation; the placement of structures such as culverts, storm drain outfalls, bridges, and buildings; and modifying the amount or quality of water flow to the existing bodies of waters due to adjacent landscape modifications. In general, FEMA is concerned with any construction activities within 200 feet of waters of the U.S., and requests additional documentation in Section D of the Environmental /Historic Preservation Questions for those projects.

If your project is in or near navigable waters of the U.S., you have probably collected information about this resource already in Section C of the Environmental /Historic Preservation Questions. If not, be sure to read Section C, and provide the information requested on that page.

Referencing a USGS topographic map [click here to see an example map] is an easy way to check for nearby waters of the U.S. Be sure to use a 1:24,000 scale topographic map; any scale greater than this may not show all water body features. Water bodies are represented on USGS topographic maps in blue (on maps showing water body types). One way to find out if there are wetlands nearby is to reference the wetland maps on the National Wetlands Inventory website (<http://wetlandsfws.er.usgs.gov/>). Care should be taken when referencing these maps; not all wetlands are included on the maps they maintain.

The most reliable way to determine if there are wetlands or navigable waters of the U.S. in your project area is to contact the United States Army Corps of Engineers (USACE) (<http://www.mvk.usace.army.mil/Offices/od/odf/reg-waters.asp>), an appropriate state regulatory agency such as the department of environmental protection, or a local agency such as a stormwater management district.

In your communication with the USACE or other agency, you should:

- Indicate you are applying for federal aid, and you are requesting information about the presence of jurisdictional waters or wetlands in your project area
- Include the name of the nearest city and the names of the county and state where the project will occur
- Include a description of the proposed project
- Include a 1:24,000 USGS topographic map marked with the project location

If you have determined that there are waters of the U.S. in your project area, the next step is to determine the potential impact to the body of water. The USACE (or the USFWS from your work in Section C) may indicate a potential to impact a water of the US in the agency's response to your request for information. You can also determine potential impacts by carefully reviewing your project scope of work. If your project indicates that it involves work in the water, excavation of material from the water or placement of material in the water, then you should answer "yes" to Section D, Question 1 of the PDM Environmental and Historic Preservation Questions.

Projects that typically result in a "Yes" answer to Section D, Question 1 include:

- Culvert replacement or realignment
- Drainage improvements, to include straightening, widening and deepening on channels, ditches, or other water bodies
- Construction of retention or detention ponds,
- Work on bridges
- Stream bank stabilization

- Any construction within 200 feet of a waterway that could contribute to erosion or sedimentation.

D.-2 Agency Coordination, Permitting, and Evaluation of Alternatives

If you answered “yes” to Section D, Question 1 of the PDM Environmental and Historic Preservation Questions, coordination with the appropriate regulatory agency coordination is extremely important. You should identify permitting requirements with the USACE, with an appropriate state regulatory agency such as the department of environmental protection, and with the local agency with permitting authority, such as a stormwater management district, if one exists. You should contact each of the agencies requesting that they identify permitting requirements for your project.

In your communication with the USACE or state regulatory agency, you should:

- Indicate you are applying for federal aid, and you are requesting information about permitting requirements for your project [click here to see an example letter]
- Include the name of the nearest city and the names of the county and state where the project will occur
- Include a detailed description of the proposed project
- Include a 1:24,000 USGS topographic map and NWI inventory maps marked with the project location
- Include engineering drawings and specifications
- Include photos of the project area

These agencies typically take at least 30 days to respond, so it is important to initiate contact early. If you have not received an agency response as you are finalizing your application, it is a good idea to follow up with them to find out when you can expect it. Indicate the status of this correspondence in your project application, and scan and attach any letters you receive in response to your contact.

Once you receive a response from a regulatory agency, read it carefully to determine if any permits will be required, or if the agency needs additional information. Responses from regulatory agencies can contain valuable information pertinent to your project, such as: conditions for permitting, environmental mitigation measures that may be required or even suggestions for changes to the scope of work.

D.-3 How to Address Adverse Effects

Adverse effects to waters of the U.S. include dredging or filling of waters, and impacts to water quantity or quality such as sediment or pollutant releases. If you anticipate that your project will have an adverse effect to wetlands or other waters of the U.S., then you should consider ways to avoid those effects, minimize the effects, and if necessary, compensate for the effects. When possible, all projects should be designed to avoid adverse effects to waters of the U.S. If adverse effects cannot be avoided, develop appropriate treatment measures into the scope of work so adverse effects are reduced and

<ul style="list-style-type: none"> • Placement of fill in a waterway or a wetland • Diminishing the quantity, quality, or function of a wetland 	<ul style="list-style-type: none"> • If applicable, acquire a State or local regulatory agency permit (i.e., Department of Environmental Protection) • Seed bare ground with grasses • Replace trees and shrubs with live plantings • Acquire a U.S. Army Corp of Engineers Nationwide or Individual Permit. • If applicable, acquire a State or local regulatory agency permit (i.e., Department of Environmental Protection) • Utilize silt barriers, screen fences, sediment traps, and in-water sediment control devices. • Time project to coincide with seasonal low waters. • Acquire a U.S. Army Corp of Engineers Nationwide or Individual Permit. • If applicable, acquire a State or local regulatory agency permit (i.e., Department of Environmental Protection) • Create wetlands elsewhere via “wetland banking”. Typically, mitigation involves the creation of 1 acre of wetland for every 1 acre of wetland destroyed. • Fence the perimeter of wetlands to prevent heavy equipment from inadvertently entering them
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D.-4 How to Provide Relevant and Helpful Support Documentation

If you answered “yes” to Section D, Question 1 of the PDM Environmental and Historic Preservation Questions, there are four important things to attach to your application as support documentation. Many of these items may already be included as part of your documentation in Section C of the PDM Environmental and Historic Preservation

Questions. It is not necessary to provide the information again, but please reference it in the comment area of Section D.

First, attach to the application a 1:24,000 USGS topographic map and NWI inventory map indicating:

- the project site
- the location of construction activities
- the location of jurisdictional waters or wetlands

Second, documentation of your contact with relevant agencies, including:

- scanned and attached copies of response letters and emails;
- summaries of relevant telephone conversations; and
- the status of any outstanding correspondence.

Third, provide a narrative description of the water body and the activities that will be performed in or near the water body.

Fourth, incorporate the comments from the USACE or other permitting agencies directly into the comment area of Section D of the PDM Environmental and Historic Preservation Questions. If the USACE requires general conditions for permitting, include them in your scope of work and as a line item in your cost estimate. If wetland mitigation is required, include that information in your scope of work and as a line item in your cost estimate. Be sure to include in your scope of work and cost estimate for any post-construction treatments needed to restore the site, such as seeding, mulching, or planting. Additional project costs that are necessary for permitting conditions, mitigation, and site restoration are eligible expenses under PDM if they are identified in the scope of work and in the cost estimate.

Additionally, if your project has the potential to adversely affect a wetland, you should also identify, evaluate, and document alternatives to the proposed project in the comment area of Section D of the PDM Environmental and Historic Preservation Questions, or include as an attachment. To document alternatives, write a summary of each alternative considered. Also include a statement why that alternative was dismissed. A project may not be located in a wetland if there are reasonable alternatives outside the wetland.

Date

Name

United States Army Corps of Engineers

Address

City State Zip

Subject: Request for information about proposed FEMA project; Pre-Disaster Mitigation Competitive (PDM-C) Program, in the Town of Blackrock, Seneca County, State

Dear Name:

The City of Blackrock has applied to the Federal Emergency Management Agency (FEMA) for a grant under FEMA's Pre-Disaster Mitigation-Competitive (PDM-C) program. PDM-C grants provide funding for measures designed to reduce or eliminate future disaster damage and disaster relief expenditures. The Town of Blackrock proposes to make stream improvements including channel straightening and stream bank armoring along Seneca Creek to alleviate flooding damage to Blackrock Road and the bridge over Seneca Creek. The project area is located next to Blackrock Road where it crosses Seneca Creek (see attached map).

One of the requirements for the FEMA PDM-C application is to identify the presence of any regulated resources in the project area, or any permitting requirements that may be involved. At this time, the city of Blackrock would like to inquire about resources regulated under the Clean Water Act, the Rivers and Harbors Act, Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Floodplain Management. Attached to this correspondence is a USGS map indicating the project area, pictures showing the project site and the nearby environment, a narrative describing the proposed scope of work, a Hydrology and Hydraulics study of the proposed action, and site drawings showing the extent of the project activities.

The proposed project involves straightening about 800 linear feet (lf) of the channel of Seneca Creek west of the bridge over Seneca Creek. This would require excavating the existing bank between 0 and 30 feet to the south to allow the stream to follow a straighter path. The excavated bank would be lined with rip-rap to protect it from future erosion. The second element of the project is upstream of the bridge over Seneca Creek, and involves the placement of rip-rap armor on about 400 lf of the north side of the stream (see photos).

Your assistance in this matter is greatly appreciated. If you have any questions regarding this project, please contact me by phone (xxx) xxx-xxxx, fax (xxx) xxx-xxxx, by email (Blackrock.us.town.state), or by letter at the letterhead address.

Sincerely,

Topographic maps can be ordered from the USGS directly (<http://topomaps.usgs.gov/>), or can be obtained free of charge online from the United States Department of Agriculture (<http://datagateway.nrcs.usda.gov/>).

