

# LFUCG Permit Checklist for Commercial and Institutional Development in and along Streams

- Federal 404 Permit and KY 401 Water Quality Certification**
  - Complete the attached checklist for **Nationwide Permit 39**. A permit application to USACE is not necessary if all permit conditions are met. Otherwise, an individual permit application must be submitted to USACE. **A preconstruction notification must be submitted to USACE regardless of the size of the project.**
  - Completed the attached checklist for the KY 401 Water Quality Certification.
  
- KY Permit to Construct In and Along a Stream**
  - Complete the KDOW stream construction permit application.
  - Submit the permit application to the LFUCG Floodplain Administrator in DOE for review and signature.
  - Submit the signed permit application to KDOW.
  - Develop and implement an erosion and sediment control plan.
  
- KYR10, General Permit for Construction Activities** – This permit is required for projects that will disturb one or more acres of land.
  - Submit an electronic Notice of Intent to KDOW.
  - Develop and implement a Stormwater Pollution Prevention Plan and keep it on site. A template is available on the LFUCG Stormwater web page.
  - File a Notice of Termination with KDOW once the area is stabilized.
  
- LFUCG Land Disturbance Permit** – Submit the permit application to DOE.
  
- LFUCG Special Floodplain Permit** – This permit is required for the situations described in Article 19-8 of the LFUCG Zoning Ordinance. Appropriate documentation shall be submitted to the Division of Engineering.
  
- FEMA Requirements** – See document entitled “Summary of FEMA Requirements” on the LFUCG website.
  
- EPA Underground Injection Control** – This applies when stormwater is to be discharged into an improved sinkhole or a subsurface fluid distribution system. An inventory form must be submitted to EPA and a copy submitted to DOE.

## Links

U.S. Army Corps of Engineers Nationwide Permits

<http://www.lrl.usace.army.mil/>

KY 401 Water Quality Certification

<http://water.ky.gov/permitting/Pages/KYWaterQualityCertProg.aspx>

KY Electronic Notice of Intent for Construction

<https://dep.gateway.ky.gov/eForms/default.aspx?FormID=7>

KY Division of Water Permitting Information

<http://water.ky.gov/permitting/Pages/default.aspx>

KY Permit for Construction in the Floodplain

<http://water.ky.gov/floodplain/Pages/FloodplainConstruction.aspx>

EPA Underground Injection Control

[http://water.epa.gov/type/groundwater/uic/class5/comply\\_minrequirements.cfm](http://water.epa.gov/type/groundwater/uic/class5/comply_minrequirements.cfm)

LFUCG Zoning Ordinance, Article 19 – Floodplain Conservation and Protection

<http://www.lexingtonky.gov/Modules/ShowDocument.aspx?documentid=1671>

LFUCG Code of Ordinances, Chapter 16, Article X – Stormwater Discharges

[http://library.municode.com/HTML/11163/level3/COOR\\_CH16SEGAREWE\\_ARTXSTDI.html](http://library.municode.com/HTML/11163/level3/COOR_CH16SEGAREWE_ARTXSTDI.html)

# USACE Nationwide Permit #39: Commercial and Institutional Developments

## *US ACE Conditions for NWP # 39 Eligibility*

Covers discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. **Preconstruction notification to USACE is required for all activities.**

## **Special Conditions for All US ACE Nationwide Permits**

- Projects cannot interfere with navigation.
- Activities cannot disrupt the life cycles or movement of aquatic life.
- Spawning areas must be avoided to the maximum extent practicable.
- Migratory bird breeding areas must be avoided to the maximum extent practicable.
- No trash, debris, car bodies, asphalt, toxic material, or other unsuitable materials are allowed.
- Work around water supply intakes is limited to work on the intake or stabilizing adjacent banks.
- Impoundments must minimize any adverse effects on aquatic systems and flows.
- Pre-construction flows must be restored after construction; work must withstand high flows.
- Fills within the 100-year floodplain must comply with state/local FEMA requirements.
- Heavy equipment working in wetlands or mudflats must be placed on mats.
- Appropriate erosion and sediment controls, including prompt stabilization, is required.

- Temporary fills must be removed and the area revegetated after work is completed.
- Any structure or fill must be properly maintained, to ensure public safety.
- Any activities in Wild and Scenic Rivers require special federal and state approval.
- Activities cannot jeopardize the continued existence of a threatened or endangered species.
- Activities affecting historic properties require special federal and state review and approval.
- Impacts to critical water resources (e.g., Steeles Run in Fayette County) require special review.
- Mitigation may be required by US ACE for impacts to streams, wetlands, and other U.S. waters.
- US ACE permittees must comply with state water quality certification requirements.
- Each project must be permitted under a single nationwide permit.
- Permits may be transferred upon application to and approval of the US ACE.
- Permittees receiving NWP verifications must file a report on the work, including mitigation.
- Each activity must be a single and complete project, with coverage by the same permit.
- NWPs do not eliminate the need for other permits or grant any property rights or privileges.

## KY 401 Water Quality Certification Conditions for NWP 39

- The activity will impact less than one acre of jurisdictional wetlands.
- The activity will impact less than 300 linear feet of impact on intermittent and perennial streams. Impacts to ephemeral streams are not limited under this general certification.
- The activity will not impact waters of the Commonwealth identified by the Kentucky Division of Water as Outstanding State or National Resource Waters, Cold Water Aquatic Habitat, or Exceptional Waters.
- Projects that do not meet the conditions of this general certification require an individual Section 401 water quality certification.
- Activities qualifying for coverage under this general water quality certification are subject to the following conditions:
  - Measures shall be taken to prevent or control spills of fuels, lubricants, or other toxic materials used in construction from entering the watercourse.
  - In areas not riprapped or otherwise stabilized, revegetation of stream banks and riparian zones shall occur concurrently with project progression. At a minimum, revegetation will approximate pre-disturbance conditions.
  - To the maximum extent practicable, all in stream work under this certification shall be performed during low flow.
  - Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances where such in stream work is unavoidable, then it shall be performed in such a manner and duration as to minimize turbidity and disturbance to substrates and bank or riparian vegetation.
  - Any fill shall be of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created because of its placement.
  - If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when work will be done.

- Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.
- Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the Kentucky Division of Water shall be notified immediately by calling 800/928-2380.