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## Section 107. - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

**107.01 Laws to be Observed.** Add the following:

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| Add the following paragraph if a 401 or 404 permit is included in the contract. |

**Section 401 and 404 of the Clean Water Act.**

Comply with the terms and conditions of any permits that authorize the discharge of dredged or fill material in waters of the U.S., including Section 404 permits and Section 401 water quality certifications. See the appendix for permits.

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| Use the following Subsection 107.01 on projects that require coverage under an NPDES permit. Some state specific language may be needed in addition to the following. Information to fill in blanks located below:Exceptions:(1) Less than 1 acre of total disturbance (1). - No NPDES permit required.(2) Project meets criteria for routine maintenance (2). - No NPDES permit required. Document assumptions used to reach this decision in a memo in the project file.(3) Less than 5 acres of disturbance and the project qualifies for a Low Erosivity Waiver. Document assumptions used to reach this decision in a memo in the project file. Consult the construction general permit to determine if project-specific requirements are necessary. Consult with EPS for clarifications and technical assistance.(1) Disturbance area is typically clearing limit to clearing limit including the roadway. It also includes staging, stockpile, and waste areas outside of the clearing limits. Projects that are near the thresholds (1 acre and 5 acres) may be bumped to a higher category when the areas outside the clearing limits are included.(2) Routine Maintenance - Work that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site**. Not all states have this exception.*** Performed on a frequent basis – not longer than a few years
* Does not disturb soils beneath the pavement. This is a gray area when doing full depth reclamation that includes just aggregates and varies by state. Consult with EPS.
* Reconditioning dirt and aggregate surfaced roads and adding aggregate. Does not include widening of roadways.
* Cleaning (pulling) ditches on dirt or aggregate surfaced roads. If there is vegetation removal to soil on paved roads, it will probably not meet the criteria.
* Asphalt overlays of existing pavements with no other disturbances of soil. Does not include adding asphalt or concrete paving to existing aggregate or dirt roads.
* Pavement preservation. Chip seal, fog seal, and micro-surfacing with no soil disturbances. Large stockpile and staging areas can negate this if there is a potential for sediment loss or other pollution from those operations.
* Consult with EPS for other situations that may qualify.
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**National Pollutant Discharge Elimination System (NPDES)**

Comply with the requirements of the applicable Construction General Permit (CGP) as shown in Table 107-1. The applicable CGP is fill in State / Agency from Table 107-1.

Prepare a Stormwater Pollution Prevention Plan (SWPPP) according to Section 157. If the current CGP expires during the contract, amend the SWPPP when a new permit goes into effect to meet new permit conditions.

Allow XX days from submittal of NOI to issuance of permit.

**(a) General.** Designate a qualified Erosion Control Supervisor according to Subsection 157.03.

Obtain a separate NPDES permit associated with industrial activity for any mobile asphalt and concrete plants that provide material for the project. Provide a copy of the permit and acknowledgement letter to the CO for their records.

**(b) Notice of Intent (NOI).** After the SWPPP is approved, file the NOI as a primary operator if shown in Table 107-1. Allow the regulatory review period, shown in Table 107-1, from submittal of NOI to receipt of authorization of coverage under the CGP. Provide a copy of the NOI and confirmation letter to the CO.

Post all project authorization numbers near the entrance to the site and on the bulletin board.

**(c) Payment of Permit Fees.** Submit the appropriate permit fees and renewal fees required for both the Contractor and Government to the regulatory agency.

**(d) Notice of Termination (NOT).** If applicable, file a NOT if the conditions listed in the CGP have been met or transfer the NOI to the maintaining agency when project has reached final acceptance.

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| Include the entire Table 107-1 – do not delete rows from the table.For projects in Indian Country, revise the XX in the permit number to match the applicable state – see this EPA website for permit numbers <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-b-areas-of-permit-cover.pdf>. <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-appendix-b-areas-of-permit-cover.pdf>. |

**Table 107-1
NPDES Permits**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **State / Agency** | **Permit Number and Link** | **Effective Date** | **Expiration Date** | **Regulatory Review period** |
| Arizona | [AZG2020-001](https://static.azdeq.gov/permits/azpdes/cgp_permit.pdf) | 7/1/2020 | 6/30/2025 | 30 days |
| California(1) | [2022-0057-DWQ](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0057-dwq.pdf) | 9/1/2023 | 8/31/2028 | 7 days |
| Colorado (Federal) | [COR10F000](https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf) | 2/17/2022 | 2/16/2027 | 14 days |
| Colorado (Other) | [COR400000](https://oitco.hylandcloud.com/CDPHERMPublicAccess/api/Document/AQfwokluDriUFw9rLI8HeKnA3FOQD9oxLj2WtUV%C3%896urJ3JjLHBBWZPGaal9FHPt1L9vF9iX3AMKBHphEdDOVvyQ%3D/) | 4/1/2024 | 03/31/2029 | 10 days |
| Hawaii | [HAR 11-55, Appendix C](https://health.hawaii.gov/cwb/files/2024/01/January-29-2024-11-55-Appendices-C-A.pdf) | 1/29/2024 | 1/29/2029 | 10 days |
| Indian Country | [XXR10I000](https://www.epa.gov/npdes/2022-construction-general-permit-cgp#2022cgp)  | 2/17/2022 | 2/16/2027 | 14 days |
| Kansas | [S-MCST-2208-1](http://www.deq.state.ne.us/Publica.nsf/pages/WAT012) | 12/1/2021 | 11/30/2026 | 60 days |
| Nebraska | [NER210000](http://www.deq.state.ne.us/Publica.nsf/pages/WAT012) | 12/1/2021 | 11/30/2026 | 7 days |
| Nevada | [NVR100000](https://ndep.nv.gov/uploads/documents/Construction_SW_GPermit_2015_.pdf) | 1/5/2015 | 1/4/2020(2) | 14 days |
| New Mexico | [NMR100000](https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf) | 2/17/2022 | 2/16/2027 | 14 days |
| North Dakota | [NDR11-0000](https://deq.nd.gov/publications/wq/2_NDPDES/Stormwater/Construction/NDR11per20200401F.pdf) | 4/1/2020 | 3/31/2025 | 7 days |
| Oklahoma | [OKR10](https://www.deq.ok.gov/wp-content/uploads/water-division/OKR10-2022-Final-permit-1.pdf) | 10/18/2022 | 10/17/2027 | 14 days(3) |
| South Dakota | [SDR100000](https://danr.sd.gov/OfficeOfWater/SurfaceWaterQuality/docs/DANR_ConstructionGeneralPermit2023.pdf) | 11/1/2023 | 10/31/2028 | 15 days |
| Texas (small)(4) | [TXR150000](https://www.tceq.texas.gov/downloads/permitting/stormwater/general/construction/2023-cgp-txr150000.pdf) | 3/5/2023 | 3/5/2028 | 2 days |
| Texas (large) | [TXR150000](https://www.tceq.texas.gov/downloads/permitting/stormwater/general/construction/2023-cgp-txr150000.pdf) | 3/5/2023 | 3/5/2028 | 7 days |
| Utah | [UTRC00000](https://documents.deq.utah.gov/water-quality/stormwater/construction/DWQ-2020-013890.pdf) | 07/1/2024 | 06/30/2029 | None |
| Wyoming (small)(5) | [WYR10-A000](https://drive.google.com/file/d/1GMfaOewy9KN3CbobjDrwFJvM8fLu--nA/view) | 9/11/2020 | 8/1/2025 | None |
| Wyoming (large) | [WYR100000](https://drive.google.com/file/d/1FwVC3LegHgCtbZpeRFX2F5UBy_x1rTm4/view) | 9/11/2020 | 8/1/2025 | 10 days |

(1) Upload the SWPPP to the California Water Boards Stormwater Multiple Application and Report Tracking System (SMARTS) and complete the NOI application previously started by the Government. Notify the CO once the NOI application is complete. Do not certify the NOI.

(2) Permit administratively extended.

(3) 45 days for projects over 40 acres or in a sensitive watershed.

(4) Prepare a Construction Site Notice rather than an NOI.

(5) Prepare a SWPPP rather than an NOI. Implement the SWPPP before ground disturbing activities.

**107.02 Protection and Restoration of Property and Landscape.**

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| Use the following on all projects. The Quality Level Certification defines the level of effort locating and mapping the utilities for the project. Be specific with spot locations, as applicable. |

Add the following at the end of this subsection:

The locations of the utilities shown in the plans have been certified to a Quality Level \_\_, with spot locations certified to a Quality Level \_\_ according to the CFLHD Utility Data Quality Certification requirements:

<http://flh.fhwa.dot.gov/resources/row/cfl/documents/UtilityDataQualityLevelCertification.doc>

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| Include if NO utilities exist within the project limits. |

Add the following:

There are no known utilities within the project right of way.

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| Use the following if utilities exist within the project limits. The Quality Level Certification defines the level of effort locating and mapping the utilities for the project. Be specific with spot locations, as applicable. |

Add the following at the end of this subsection:

The locations of the utilities shown in the plans have been certified to a Quality Level \_\_, with spot locations certified to a Quality Level \_\_ according to the CFLHD Utility Data Quality Certification requirements:

<http://flh.fhwa.dot.gov/resources/row/cfl/documents/UtilityDataQualityLevelCertification.doc>

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| Use the following when Utilities exist within the project limits. The Status of Utilities Table may be copied from the Right of Way and Utility Certification. Add additional language, as required, for project specific conditions. |

**Table 107-2
Status of Utilities**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Company | Utility Type | Contact Name | Phone Number | Status 1, 2, 3, or 4 |
| 1 |  |  |  |  |  |
| 2 |  |  |  |  |  |
| 3 |  |  |  |  |  |
| 4 |  |  |  |  |  |
| 5 |  |  |  |  |  |
| 6 |  |  |  |  |  |

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| Status 1: If utilities are in conflict with the project and require relocation by others during construction, include directions for any required coordination or notifications in this Subsection. Include any schedules and limits to construction under Section 108. |

**Status 1**: The utilities are in conflict with the project and require relocation by others during construction.

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| Status 2: If utilities are in conflict with the project and require relocation by the Contractor during construction, include the appropriate Plan drawings, SCR;s (including, but not limited to: 611, 612, and 636) and Pay Items in the PS&E Package. Include any schedules and limits to construction under Section 108. Review any contractual requirements indicated by the Utility Resolution Plan and include the requirements in appropriate SCR Sections. |

**Status 2**: The utilities are in conflict with the project and require relocation by the Contractor during construction.

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| Status 3: If utilities are in conflict with the project and require relocation before construction, include the estimated date relocations will be completed. Include any schedules and limits to construction under Section 108. |

**Status 3**: The utilities are in conflict with the project and require relocation by others before construction.

**Status 4**: The utilities are located within the project rights of way but require no relocation.

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| Add the following for all projects. |

**107.05 Responsibility for Damage Claims.** Delete the first sentence of the third paragraph and substitute the following:

Before work begins, submit “*certificates of insurance*” certifying that the policies will not be changed or canceled until 30 days written notice has been given to the Government.

**107.08 Sanitation, Health, and Safety.** Delete the first paragraph and substitute the following:

Follow the requirements of FAR Clause 52.236-13 Accident Prevention, Alternate 1. Submit an accident prevention plan.

**107.10 Environmental Protection.**

**(a) Federal Water Pollution Control Act (Clean Water Act) 33 USC § 1251 et seq.** Add the following:

**(4)** Do not ford running streams with construction equipment. Obtain approval from the CO to use temporary bridges or other structures whenever crossings are necessary.

**(5)** Locate machinery servicing and refueling areas away from streambed, wetlands, shorelines, lakes, and reservoirs to reduce the possibility and minimize the impacts of accidental spills or discharges.

**(b) Oil and hazardous substances**. Delete the third and fourth paragraphs and substitute the following:

Do not use equipment with leaking fluids. Repair equipment leaks immediately. Keep absorbent material manufactured for containment and cleanup of hazardous material on the job site. Sand and soils are not approved absorbent materials.

Notify the CO of hazardous spills. Report the spill to the appropriate federal, state, and local authorities as required by the SPCC plan or hazardous spill plan.

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| Add the following as necessary |

**(c) Dirt, plant, and foreign material.**  Add the following:

All vehicles and equipment entering the project area must be clean of noxious weeds and free from oil leaks and are subject to inspection. Wash all construction equipment to thoroughly remove all dirt, plant, and other foreign material prior to entering the project. Particular attention must be shown to the under carriage and any surface where soil containing exotic seeds may exist. Allow the CO to inspect each piece of equipment before entering the project. Provide the cleaning and inspection records to the CO. Equipment found operating on the project that has not been inspected or has oil leaks will be shut down.

**(d) Clearances for Contractor-selected, noncommercial areas.** Add the following to the end of the first paragraph:

Use rock, sand, gravel, earth, subsoil, or other natural materials from a Contractor-selected non-commercial materials source that has been certified free of noxious weeds. Materials imported into the project limits which do not include a noxious weed free certification may be rejected and ordered by the CO to be removed from the project limits. The CO has the discretion of requesting inspection of certified materials by a third party and rejecting the use of the source if noxious weeds or seeds thereof are found to be present.

Add the following:

**(5) Any required Certifications.**

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| Add any project specific environmental commitments due to legal requirements (additional permits not already mentioned, safety and health restrictions, trial ordinances, monitors, animal/bird surveys, etc).**DO NOT** duplicate information in multiple sections.Examples for this section:Provide a qualified archeological monitor during excavation activities between Stations 787+00 and 810+00. See Subsection 623.04A for qualification requirements.Do not remove, injure, or destroy trees or other plants without prior approval of the CO.Clear all trees between September 15 and March 1 to avoid nesting bird season.Construct riprap revetment during low flow periods of 200 cfs as measured at gauge 12345. Current stream gauge data is available at *[website link]*Notify the CO at least 14 days prior to working in archeological sensitive areas. Do not remove material in these areas without the approval of the CO in consultation with Park |

Add the following:

**(e) Project-specific commitments.**

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| Coordinate with Environment for project-specific commitments. The text in (1) below is for migratory bird surveys; revise as needed for project-specific conditions. |
| If applicable, use the following text in (1) if NOT including a specific pay item for the biologist. |

**(1)** Provide a qualified biologist, at no additional cost to the Government, to perform the following:

*(a)* Conduct pre-construction nest surveys within the clearing limits if vegetation clearing or work on suitable nesting structures will occur within the breeding season (from <<<Month Date>>> to <<<Month Date>>>). Survey vegetation and suitable nesting structures, including bridges and culverts, at least <<<XX>>> days before <<<describe work that triggers survey>>> at the site begins. If vegetation clearing or suitable nesting structure work occurs outside of the breeding season, no surveys are required.

*(1)* Conduct nest survey in phases if vegetation removal or suitable nesting structure construction will occur in phases along the project route, so that no more than <<<XX>>> days lapses between survey and potential nest disturbance at any one location.

*(2)* Notify the CO immediately if any active nest that may be adversely affected by construction activities is discovered; include information on nesting species, activities in the vicinity of the nest, topographic and other visual barriers, and recommended protection measures. Establish a no-disturbance buffer, in coordination with the CO, around the nests that is sufficient to ensure that breeding is not likely to be disrupted by construction. Maintain buffers until the qualified biologist has determined the young have fledged or nests are no longer active.

*(3)* Submit a report documenting the methodology and results of the surveys to the CO within 7 days after completion of surveys. Include recommendation for handling of any unoccupied nests observed and nesting prevention recommendations, if appropriate.

*(b)* Conduct a resurvey of vegetation and suitable nesting structures, as needed, after any lapse in construction of <<<XX>>> days or more within the breeding season.

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| If applicable, use the following text in (1) if including a specific pay item for the biologist. |

**(1)** Provide a qualified biologist according to Subsection 623.04

**(2)** describe commitment

**(3)** describe commitment

|  |
| --- |
| Check with the owner agency for the requirements of a fire plan and have the agency (i.e. Forest Service, Park Service, etc.) provide the fire plan and include it in the Appendix.Delete the following paragraph if a fire plan is not included. |

**107.11 Protection of Forests, Parks, and Public Lands.** Add the following:

Comply with the fire prevention plan included in the Appendix. The CO will order the emergency suspension of operations when conditions are unsafe as determined by the CO and the land management agency.