

## Wetland and Stream Permit (WSP) /Water Quality Certification (WQC) Application Requirements

In accordance with CWA Section 401 Certification Rule (<https://www.epa.gov/cwa-401/clean-water-act-section-401-certification-rule>), effective September 11, 2020, applicants must request a pre-filing meeting with DOEE 30 days prior to submitting a WQC application. To request a pre-filing meeting email [Wetlandprogram@dc.gov](mailto:Wetlandprogram@dc.gov).

In accordance with 21 DCMR § 2602, the following documents must be included in a WSP/WQC application:

- Signed USACE joint permit application form, found here (<https://www.nab.usace.army.mil/Missions/Regulatory/Permits-DC/>)
- A detailed description of the proposed project including:
  - Project purpose and need;
  - Justification for proposed water-dependent activities;
  - A description of facilities to be constructed or modified and work to be performed that would impact wetlands, streams, or other District waters;
  - A description of the size and location of the proposed project site;
  - A copy of either the approved jurisdictional determination letter from the U.S. Army Corps of Engineers or the preliminary jurisdictional determination form;
  - The area (in square feet), length (in feet), and type(s) of streams and wetlands proposed to be impacted, including the area or length determined to be waters of the United States; and
  - The applicant's proposed mitigation plan.
- A wetland and stream delineation report for the site, with supporting documents, that delineates all wetlands and streams within the project vicinity and includes:
  - Wetland determination data forms for each wetland community in accordance with U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and Regional Supplements, accessible on the U.S. Army Corps of Engineers' website: <https://www.nab.usace.army.mil/Missions/Regulatory/Jurisdictional-Determinations>;
  - Topographic mapping; and
  - Survey mapping.
- A site plan that includes the following information:
  - Wetland boundaries, as marked or flagged in the field, based on field delineation and delineated in accordance with the U.S. Army Corps of Engineers Wetland Delineation Manual and its Regional Supplements;
  - Wetland and upland data point locations delineated in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual and Regional Supplements;
  - Stream top-of-bank boundaries and ordinary high water mark boundaries, as marked or flagged in the field, based on field delineation;
  - Locations of springs, seeps, vernal pools, and other aquatic resources;
  - Locations of existing and proposed structures or utilities;
  - Proposed locations of regulated activities and limits of disturbance;

- Property lines of any parcels impacted by the regulated activity;
- Locations and number of soil or sediment investigations and any soil or sediment contamination issues;
- Locations and number of groundwater investigations and any contamination issues; and
- Locations of project sites on District Flood Insurance Rate Map (FIRM).
- As applicable, a cross-sectional drawing of each proposed impact area that includes at a minimum:
  - Graphic scale;
  - Existing structures;
  - Existing and proposed elevations;
  - Limits of wetlands and streams;
  - Flow direction;
  - For non-tidal streams, ordinary high water mark and top-of-bank;
  - For tidal streams, mean low water and mean high water lines;
  - Impact limits; and
  - Location of all existing structures and proposed structures.
- Profile drawing(s) with the information listed in paragraph (d), if required by DOEE to demonstrate minimization of impacts;
- A list of each type of wetland proposed to be impacted, identified by its Cowardin classification, and for each classification of wetland:
  - The area of each proposed wetland impact in square feet; and
  - The total area of all proposed impacts in square feet.
- A list of individual stream impacts as follows:
  - By length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; and
  - In square feet to the nearest whole number.
- Representative photographs of the impacted wetland or stream, riparian buffers, data point locations, and project area;
- A completed environmental impact screening form and review documents, if required by the District of Columbia Environmental Policy Act of 1989, effective October 18, 1989 (D.C. Law 8-36; D.C. Official Code § 8-109.01 *et seq.*), and by 20 DCMR § 7201;
- Names of adjacent property owners;
- A photo location map identifying the direction of each photo taken;
- A functional assessment of the wetlands and streams directly or indirectly, temporarily or permanently impacted by the proposed activity;
- An avoidance and minimization analysis; and
- A mitigation plan.

Once the above information is submitted to DOEE, the applicant is required to submit a **certification request letter** that includes the following information:

1. Identify the project proponent(s) and a point of contact;

2. Identify the proposed project;
3. Identify the applicable federal license or permit;
4. Identify the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
5. Include a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
6. Include a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
7. Include documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
8. Contain the following statement: 'The project proponent hereby certifies that all information contained herein is true, accurate, and complete, to the best of my knowledge and belief'; and
9. Contain the following statement: 'The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.'

#### **Water Dependent Projects / Non-Water Dependent Projects with No Practicable Alternative**

DOEE will not issue a WSP or WQC for regulated activities unless the applicant demonstrates:

- The proposed project is either water-dependent, or is not water dependent but has provided justification that no practicable alternative exists. Water dependent projects require access to, proximity to, or location within a stream or wetland to fulfill the basic project purpose.
- The regulated activity has avoided and minimized impacts to wetlands and streams based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions.
- The applicant has developed and implemented or will implement a mitigation plan.

#### **Avoidance and Minimization Analysis**

Proposed impacts to wetlands and streams must be first avoided and then minimized to the greatest extent practicable. The applicant must demonstrate that all practicable alternatives have been analyzed and the proposed wetland and stream impacts have no practicable alternative in accordance with 21 DCMR § 2606.

#### **Mitigation**

In accordance with 21 DCMR § 2607, mitigation is required to offset functional, temporal, and permanent environmental losses resulting from unavoidable impacts associated with regulated activities. Applicants must complete mitigation, to the maximum extent practicable, in advance of or concurrent with the approved regulated activity. Higher mitigation ratios are required to offset temporal

losses of stream and wetland functions that will result from regulated activities. Mitigation projects must replace lost wetland or stream functions at a minimum of a 1:1 ratio. Where in-kind functional replacement is not practicable, mitigation ratios will be increased to account for functional loss and to ensure the goal of no net loss and eventual net gain of wetland acreage and function is met.

DOEE will require mitigation using one or a combination of four possible methods. In preferred order, these methods are:

1. creation of a new wetland;
2. restoration of a previously existing wetland or stream;
3. enhancement of an existing wetland or stream functions; or
4. preservation of an existing wetland or stream.

In addition, there are two mechanisms for providing mitigation, in order of preference:

1. permittee-responsible mitigation (the preferred mechanism); and
2. payment into the District of Columbia’s Wetland and Stream Mitigation Trust Fund. However, payment into the District’s Wetland and Stream Mitigation Trust Fund may not satisfy US Army Corps of Engineers mitigation requirements.

Permittee-responsible mitigation sites must be located, in preferred order:

1. on-site where the wetland or stream impact(s) will occur;
2. in the drainage basin where the wetland or stream impact(s) will occur;
3. in the sub-watershed where the wetland or stream impact(s) will occur; or
4. outside the watershed where the wetland or stream impact(s) occur, but within the District.

This will ensure that development occurs in a manner that adheres to the District’s long-standing Wetland Conservation Plan Goal of no net loss, and the eventual overall net gain, of wetland acreage and function. Payment into the District’s Wetland and Stream Mitigation Trust Fund may not satisfy U.S. Army Corps of Engineers mitigation requirements.

Given the small size of the majority of the District’s wetlands, no *de minimis* threshold has been established for requiring mitigation. However, regulated activities cumulatively totaling two thousand five hundred (2,500) square feet or less in size of impact for a single project may fulfill mitigation requirements through payment into the District’s Stream and Wetland Mitigation Trust Fund, in accordance with 21 DCMR § 2607.21.

The mitigation ratios for impacts to streams are as follows:

Type of Stream	Restoration Ratio	Preservation and Enhancement Ratio	District Wetland and Stream Mitigation Trust Fund Payment
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Ephemeral	1:1	1.5:1	1.5:1
Intermittent	2:1	3:1	3:1
Perennial	2:1	3:1	3:1

The mitigation ratios for impacts to wetlands are as follows:

Wetland Type	Mitigation Method		
	Creation/Restoration	Enhancement and Preservation	District Wetland and Stream Mitigation Trust Fund Payment
Emergent	1:1	1.5:1	1.5:1
Shrub-scrub	2:1	3:1	3:1
Forested	2:1	3:1	3:1
Emergent Wetland of Special Concern	2:1	3:1	3:1
Shrub-scrub Wetland of Special Concern	3:1	4.5:1	4.5:1
Forested Wetland of Special Concern	3:1	4.5:1	4.5:1

### **Wetlands of Special Concern**

21 DCMR § 2616 designated wetlands of special concern that have exceptional ecological value and safeguard the natural diversity of the District’s remaining wetlands. Regulated activities within these wetlands will require higher mitigation ratios for those impacts that may be permitted. A map of the wetlands of special concern can be found in Attachment A.

### **Application Fees**

Applicants for a WSP/WQC must pay fees in accordance with 21 DCMR § 2604. Nonrefundable application fees and supplemental fees based on proposed impact must be paid in order to complete the application submission process. Tables 1 and 2 below include the nonrefundable application fees and supplemental fees based on proposed impact, respectively. Additional fees, included in Table 3

below, based on contamination at the site and the proposed mitigation plan may be included after DOEE has reviewed and commented on the application but prior to issuance of the WSP/WQC. Fees can be paid through DOEE’s Stormwater Database

([https://octo.quickbase.com/up/bjezqjzuy/g/rbe/eg/va/Log\\_In.html](https://octo.quickbase.com/up/bjezqjzuy/g/rbe/eg/va/Log_In.html)).

On August 19, 2022, the Department of Energy and Environment (DOEE) amended the fees charged for regulated activities under the District’s Critical Areas – Wetland and Stream Regulations. In accordance with 21 DCMR § 2604.3, DOEE will adjust the fees annually based on the Bureau of Labor Statistics’ Consumer Price Index for June of the previous year. When paying online, a 2.36% processing fee will be added. Updated fees are included below:

Table 1. DOEE Nonrefundable Application Fees

Wetland and Stream Permit Review and/or Water Quality Certification Review	\$858.38
Minor Permit/Certification Modification (projects with impacts < 5,000 SF)	\$858.38
Major Permit/Certification Modification (projects with impacts ≥ 5,000 SF)	\$1,716.75
Request DOEE to perform Presence/Absence Survey	Desktop Review \$57.23
Request DOEE to perform Presence/Absence Survey	Site Visit \$81.83 for first hour plus \$114.45 for each additional hour

Table 2. Supplemental Fees Based on Proposed Impact

< 5,000 SF	\$1,716.75
≥ 5,000 SF to < ¼ acre	\$3,433.50
≥ ¼ acre to < ½ acre	\$5,150.25
≥ ½ acre to < ¾ acre	\$6,867.00
≥ ¾ acre to < 1 acre	\$8,583.75
≥ 1 acre	\$10,300.50

Table 3. Additional Fees

Permittee-Responsible Mitigation Plan Review	\$1,808.31
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Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PEM <sup>1</sup> /PSS <sup>2</sup> Wetlands and/or Streams	\$4,520.78
Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PFO <sup>3</sup> Wetlands	\$7,897.05
Contaminated soil, sediment, groundwater, or surface water within project site	\$1,487.85

<sup>1</sup>PEM - Palustrine emergent wetland

<sup>2</sup>PSS – Palustrine scrub shrub wetland

<sup>3</sup>PFO – Palustrine forested wetland

### Payment into the District Wetland and Stream Trust Fund

DOEE may accept payment into the District Wetland and Stream Trust Fund instead of permittee-responsible mitigation in accordance with 21 DCMR § 2607.18, 2607.19, and 2611. That is:

- If permittee-responsible mitigation is not practicable based on the justification provided in accordance with 21 DCMR § 2607.19 and 2607.20; or
- Cumulative impacts for a single project total < 2,500 square-feet.

The payment schedule for the District Wetland and Stream Mitigation Trust Fund is included below. The applicant must calculate the cost for each mitigation component listed. The sum of the costs equals the total amount of payment due. Mitigation ratios, in accordance with 21 DCMR § 2607, must be used to calculate the total mitigation fees based on the ratio of impacted stream or wetland area.

On December 1, 2022, the Department of Energy and Environment (DOEE) amended the fees charged for regulated activities under the District’s Critical Areas – Wetland and Stream Regulations. In accordance with 21 DCMR § 2611.9, DOEE will adjust the fees annually based on the Bureau of Labor Statistics’ Consumer Price Index for June of the previous year. Updated fees are included below:

Mitigation Component	Cost
Land Acquisition	Land market value*
Wetland or Stream Design	\$28,612.50 per acre
Wetland or Stream Construction and Planting	\$228,900.00 per acre
Wetland or Stream Maintenance and Monitoring for Five Years	\$17,167.50 per year
Administrative Cost for Five Years	\$9,156.00 per year

**\*Land market value costs must be included** for either the project site or a similar site that would be suitable for a mitigation project. This can be calculated using a square-foot unit price based on the area of mitigation required and the Office of Tax and Revenue property tax assessment value of the project

site or a similar suitable mitigation site. Justification must be provided to demonstrate that another site is suitable for mitigation. Examples of suitable mitigation sites include undeveloped land within a floodplain or low lying area that could realistically be used for wetland creation. Other examples include sites that have existing degraded wetlands or streams that could realistically be restored or enhanced.

### **Questions?**

Email [Wetlandprogram@dc.gov](mailto:Wetlandprogram@dc.gov) with any questions regarding District Wetland and Stream Permits and Water Quality Certifications.

### **Attachments:**

A – Map of Wetlands of Special Concern



**ATTACHMENT A – MAP OF WETLANDS OF SPECIAL CONCERN**

