

# State & Federal Environmental Considerations for Wind Projects

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# Clean Water Act Permits

- National Pollutant Discharge Elimination System (“NPDES”)
- Wetlands Permits (“§ 404”)

# NPDES Permit

## *Overview*

- NPDES permit required to discharge a pollutant from a point source into a water of the United States, including storm water from land disturbance activities, i.e., construction
- The permit sets specific discharge limits and establishes monitoring and reporting requirements and special conditions
- USEPA is charged with administering the NPDES permit program, but NDEQ has assumed full authority for the program's application in Nebraska

# NPDES Permit

## *Overview*

- 2 types of NPDES permits:
  - Individual permits: Issued specifically to the discharger
  - General permits: Issued for activities that are similar in nature and have minimal impacts

# NPDES Permit

## *Individual Permit*

Apply to NDEQ for an individual permit if a general permit is not applicable

# NPDES Permit

## *General Permit*

- If general permit(s) is applicable, determine which is appropriate for project, *e.g.*:
  - NEG671000 – Dewatering
  - NER110000 – Storm water discharges from construction site
    - Applicability: Where construction will disturb over 1 acre of land
    - Conditions: Imposes conditions, *e.g.*, employing BMPs and preparing SWPPP

# NPDES Permit

## *NER 110000 General Permit*

- Allowable discharges:
  - Stormwater associated with construction
  - Stormwater associated with support activity
  - Certain non-stormwater discharges

# NPDES Permit

## *NER 110000 General Permit*

- Does not replace:
  - Endangered or threatened species review
  - Historic places review
  - Archeological sites review



# NPDES Permit

## *NER 110000 General Permit*

- Application Process:
  - Prepare SWPPP
  - File NOI with NDEQ
  - NOI must be filed at least 7 days prior to land grading & clearing activities

# NPDES Permit

## *SWPPP*

- Identifies all potential sources of pollution which may affect the quality of storm water discharges from the construction site
- Minimizes erosion on disturbed areas and minimizes sediments and other pollutants in storm water
- Describes practices to be used to reduce pollutants in storm water discharges from the construction site
- Describes practices that will be used to assure compliance with the terms and conditions of the permit
- Must be implemented as written

# NPDES Permit

## *SWPPP Contents*

- Narrative description of project
- Legible site maps
- Description of controls to reduce pollutants

# NPDES Permit

## *Enforcement Issues*

- Maintenance of controls
- Inspection of controls
- Failure to implement or update SWPPP

# § 404 Permit

## *Overview*

- § 404 permit required to discharge dredged and fill material into waters of the United States, including wetlands
- Responsibility for administering and enforcing § 404 shared by USACE and USEPA
- 2 types of permits:
  - Individual permits: Issued specifically to the discharger
  - General permits: Issued on a nationwide or regional basis for activities that are similar in nature and have minimal impacts

# § 404 Permit

## *Pre-Permitting Steps*

- Perform site assessment, including field survey of project impact area:
  - Does location of the proposed wind farm include any wetlands or surface waters?
  - Consider support and access areas as well
- If so, evaluate project components and design to determine whether the project will impact those wetlands or surface waters

# § 404 Permit

## *Individual Permit*

- Apply for an individual permit if no general permit is applicable
  - Application must demonstrate that the discharge will not significantly degrade the nation's waters and that there are no practicable, less damaging alternatives
  - Application must describe steps taken to minimize impacts and to provide mitigation, such as restoring or creating wetlands, for any remaining, unavoidable impacts
- USACE issues public notice, followed by notice-and-comment period
- USACE issues permit, issues permit with conditions, or denies permit

# § 404 Permit

## *General Permit*

- If general permit is applicable:
  - Determine which general permit(s) is appropriate for project, *e.g.*:
    - NWP 3 – Maintenance
    - NWP 7 – Outfall structures and associated intake structures
    - NWP 13 – Bank stabilization
    - NWP 18 – Minor discharges
    - NWP 33 – Temporary construction, access, and dewatering
  - Comply with limitations, conditions, and mitigation requirements for the general permit, *e.g.*:
    - Submit pre-construction notification (PCN) letter to USACE, if necessary
    - Utilize appropriate soil erosion and sediment controls
    - Employ BMPs



# § 404 Permit

## *New General Permits*

- USACE is proposing 2 new general permits applicable to renewable energy projects such as wind farms
- Proposed NWP A:
  - Land-based renewable energy generation facilities
  - Would authorize fill related to the construction, expansion, or modification of land-based renewable energy projects, including wind, and their attendant infrastructure such as roads, parking lots, utility lines, and water-management facilities
- Proposed NWP B:
  - Water-based renewable energy generation pilot projects
  - Would authorize structures, work, and fill in waters of the United States for the construction, expansion, and modification of hydrokinetic or wind energy pilot generation projects and their attendant infrastructure, including utility lines to transfer energy to land-based distribution facilities

# § 401 Certification

- A verification issued by the state that a project will not violate water quality standards
- A § 401 certification is needed for all federal permits or licenses (*e.g.*, § 404 permits) that might result in a discharge to state waters, including wetlands
- As part of the § 401 certification, the state may issue conditions or require project to take actions to protect water quality
- Types: Individual § 401 certification vs. blanket § 401 certification applicable to a general permit

# Clean Air Act Permits

## *Overview*

- Evaluate project components/design to determine whether the construction or operation will involve air emissions of pollutants
  - Projects that require a concrete plant to be temporarily or permanently placed at the site may require a permit
  - Projects that utilize an emergency generator may require a permit
  - Concrete, asphalt, or other crushing activities at the site may require a permit
- Nebraska's Low Emitter Rule

# Conclusion

# *Questions?*