

Chapter 3  
FEDERAL POLICIES

**SOUTH DAKOTA DRAINAGE MANUAL**

*October 2011*



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## Chapter 3

# FEDERAL POLICIES

This Chapter lists significant Federal legislation that presents Federal policies that may affect drainage design and construction. The Chapter provides the legislative reference, regulation reference, purpose, applicability, general procedures and agency coordination. For more detailed information on specific Federal policies, the applicable legislation should be consulted.

### 3.1 ENVIRONMENTAL

1. National Environmental Policy Act: 42 USC 4321-4335 (P.L. 91-190 and 94-83). Reference: 23 CFR 771-772, 40 CFR 1500-1508, Executive Order 11514 as amended by Executive Order 11991 on NEPA responsibilities.

*Purpose* — Consider environmental factors through systematic, interdisciplinary approach before committing to a course of action.

*Applicability* — All FHWA actions.

*General Procedures* — Procedures set forth in CEQ regulations and 23 CFR 771.

*Coordination* — Appropriate Federal, State and local agencies.

2. Economic, Social and Environmental Effects: 23 USC 109(h) (P.L. 91- 605), 23 USC 128, 23 CFR 771-772.

*Purpose* — To assure that possible adverse, economic, social and environmental effects of proposed highway projects and project locations are fully considered and that final decisions on highway projects are made in the best overall public interest.

*Applicability* — To the planning and development of proposed projects on any Federal-aid system for which the FHWA approves the plans, specifications and estimates or has the responsibility for approving a program.

*General Procedures* — Identification of social, economic and environmental effects; consideration of alternative courses of action; involvement of other agencies and the public; and systematic interdisciplinary approach. The report required by Section 128 on the consideration given to the social, economic and environmental impacts of the project may be part of the NEPA compliance document.

*Coordination* — Appropriate Federal, State and local agencies.

3. Public Hearings: 23 USC 128, 23 CFR 771.111(h).

*Purpose* — To ensure adequate opportunity for public hearing(s) on the effects of alternative project locations and major design features, and the consistency of the project with local planning goals and objectives.

*Applicability* — Public hearings or hearing opportunities are required for projects described in each State's FHWA-approved public involvement procedures.

*General Procedures* — Public hearings or opportunities for public hearings during the consideration of highway location and design proposals are conducted as described in the state's FHWA-approved public involvement procedures. States must certify to FHWA that such hearings or the opportunity, therefore, have been held and must submit a hearing transcript to FHWA.

*Coordination* — Appropriate Federal, State and local agencies.

### 3.2 HEALTH

1. Safe Drinking Water Act: 42 USC 300F-300J-26 (P.L. 93-523 and 99-339), 40 CFR 141-149.

*Purpose* — Ensure public health and welfare through safe drinking water.

*Applicability* — (1) All public drinking water systems and reservoirs (including rest area facilities), and (2) actions that may have a significant impact on an aquifer or wellhead protection area that is the sole or principal drinking water source.

*General Procedures* — (1) Compliance with national primary drinking water regulations, (2) compliance with State wellhead protection plans, and (3) compliance with MOAs between USEPA and FHWA covering specific sole-source aquifers.

*Coordination* — USEPA and appropriate State agency.

2. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976: 42 USC 6901, et seq., see especially 42 USC 6961-6964 (P.L. 89-272, 91-512 and 94-580), 40 CFR 256-300.

*Purpose* — Provide for the recovery, recycling and environmentally safe disposal of solid wastes.

*Applicability* — All projects that necessitate the disposal of solid wastes.

*General Procedures* — Solid wastes will be disposed of according to the rules for specific waste involved.

*Coordination* — USEPA.

### 3.3 HISTORIC AND ARCHEOLOGICAL PRESERVATION

1. Section 106 of the National Historic Preservation Act, As Amended: 16 USC 470F (P.L. 89-665, 91-243, 93-54, 94-422, 94-458, 96-199, 96-244 96-515, and 102-575), Executive Order 11593, 23 CFR 771, 36 CFR 60, 36 CFR 63, 36 CFR 800.

*Purpose* — Protect, rehabilitate, restore and reuse districts, sites, buildings, structures and objects significant in American architecture, archeology, engineering and culture.

*Applicability* — All properties on or eligible for inclusion on the National Register of Historic Places.

*General Procedures* — (1) Identify and determine the effects of projects on subject properties, (2) afford Advisory Council and affected public an early opportunity to comment in accordance with 36 CFR 800, and (3) avoid or mitigate damages to greatest extent possible.

*Coordination* — State Historic Preservation Officer, Advisory Council on Historic Preservation, DOI (NPS), public.



### 3.4 LAND AND WATER USAGE

1. Wilderness Act: 16 USC 1131-1136, 36 CFR 293, 43 CFR 19, 8560, 50 CFR 35.

*Purpose* — Preserve and protect wilderness areas in their natural condition for use and enjoyment by present and future generations.

*Applicability* — All lands designated as part of the wilderness system by Congress.

*General Procedures* — Apply for modification or adjustment of wilderness boundary by either the Secretary of the Interior or Agriculture, as appropriate.

*Coordination* — Agriculture (USFS), DOI (USFWS, NPS, BLM) and State agencies.

2. Wild and Scenic Rivers Act: 16 USC 1271-1287, 36 CFR 297.

*Purpose* — Preserve and protect wild and scenic rivers and immediate environments for benefit of present and future generations.

*Applicability* — All projects that affect designated and potential wild, scenic and recreational rivers, and/or immediate environments.

*General Procedures* — Submit project plans and reports to appropriate Federal agency.

*Coordination* — DOI (NPS) and/or Agriculture (USFS), State agencies.

3. Land and Water Conservation Fund Act (Section 6(f)): 16 USC 460-4 to -11 (P.L. 88-578).

*Purpose* — Preserve, develop and assure the quality and quantity of outdoor recreational resources for present and future generations.

*Applicability* — All projects that impact recreational lands purchased or improved with land and water conservation funds.

*General Procedures* — The Secretary of the Interior must approve any conversion of property acquired or developed with assistance under this Act to other than public, outdoor recreational use.

*Coordination* — DOI, State agencies.

4. Executive Order 11990, Protection of Wetlands: DOT Order 5660.1A, 23 CFR 777.

*Purpose* — To avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

*Applicability* — Federally undertaken, financed or assisted construction, and improvements in or with significant impacts on wetlands.

*General Procedures* — Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.

*Coordination* — DOI (USFWS), USEPA, USACE, NMFS, NRCS, State agencies.

5. Intermodal Surface Transportation Efficiency Act of 1991, Wetlands Mitigation Banks: SEC. 1006-1007 (P.L. 102-240, 105 STAT 1914), 23 USC 103(i) (13), 23 USC 133(b) (11), 23 CFR 771, 777.

*Purpose* — To mitigate wetlands impacts directly associated with Federally funded projects by participating in wetland mitigation banks, restoration, enhancement and creation of wetlands authorized under the Water Resources Development Act, and through contributions to Statewide and regional efforts.

*Applicability* — Federally undertaken, financed or assisted construction and improvements, or with impacts on wetlands.

*General Procedures* — Evaluate and mitigate impacts on wetlands. Specific finding required in final environmental document.

*Coordination* — DOI (USFWS), USEPA, USACE, NMFS, NRCS, State agencies.

6. Emergency Wetlands Resources Act of 1986: 16 USC 3921, 3931 (P.L. 99-645).

*Purpose* — To promote the conservation of wetlands in the United States to maintain the public benefits they provide.

*Applicability* — All projects that may impact wetlands.

*General Procedures* — (1) Preparation of a National Wetlands Priority Conservation Plan that provides priority with respect to Federal and State acquisition, and (2) provides direction for the National Wetlands Inventory Project.

*Coordination* — USFWS.

7. Rivers and Harbors Act of 1899: 33 USC 401, et seq., as amended and supplemented, 23 CFR Part 650, Subparts D and H, 33 CFR 114-115.

*Purpose* — Protection of navigable waters in the United States.

*Applicability* — Any construction affecting navigable waters and any obstruction, excavation or filling.

*General Procedures* — Must obtain approval of plans for construction, dumping and dredging permits (Section 10) and bridge permits (Section 9).

*Coordination* — USACE, USCG, USEPA, State agencies.

8. Federal Water Pollution Control Act (1972), as amended by the *Clean Water Act* (1977 & 1987): 33 USC 1251-1376 (P.L. 92-500, 95-217, 100-4), DOT Order 5660.1A, 23 CFR 650, Subpart B, 771, 33 CFR 209, 320-323, 325, 328, 329, 40 CFR 121-125, 129-131, 133, 135-136, 230-231.

*Purpose* — To restore and maintain chemical, physical and biological integrity of the Nation's waters through prevention, reduction and elimination of pollution.

*Applicability* — Any discharge of a pollutant into waters of the United States.

*General Procedures* — (1) Obtain permit for dredge or fill material from USACE or State agency, as appropriate (Section 404), (2) NPDES permit and other discharge permits are to be acquired from USEPA or appropriate State agency (Section 402), (3) water quality certification is required from State water resource agency (Section 401), and (4) all projects shall be consistent with the State non-point source pollution management program (Section 319).

*Coordination* — USACE, USEPA, designated State water quality control agency, designated State non-point source pollution agency.

9. Executive Order 11988, Floodplain Management, as amended by Executive Order 12148: DOT Order 5650.2, 23 CFR 650, Subpart A, 23 CFR 771.

*Purpose* — To avoid the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to restore and preserve the natural and beneficial values served by floodplains.

*Applicability* — All construction of Federal or Federally aided buildings, structures, roads or facilities that encroach upon or affect the base floodplain.

*General Procedures* — (1) Assessment of flood hazards, and (2) specific finding required in final environmental document.

*Coordination* — FEMA, State and local agencies.

10. National Flood Insurance Act: (P.L. 90-448), Flood Disaster Protection Act: (P.L. 93-234) 42 USC 4001-4128, DOT Order 5650.2, 23 CFR 650, Subpart A, 44 CFR 59, 62, 64-68, 70-71, 75-77, 23 CFR 771.

*Purpose* — (1) Identify flood-prone areas and provide insurance, and (2) requires purchase of insurance for buildings in special flood-hazard areas.

*Applicability* — Any Federally assisted acquisition of construction project in area identified as having special flood hazards.

*General Procedures* — Avoid construction in, or design to be consistent with, FEMA-identified flood-hazard areas.

*Coordination* — FEMA, State and local agencies.

11. Water Bank Act: 16 USC 1301-1311 (P.L. 91-559, 96-182), 7 CFR 752.

*Purpose* — Preserve, restore and improve wetlands of the Nation.

*Applicability* — Any agreements with landowners and operators in important migratory waterfowl nesting and breeding areas.

*General Procedures* — Apply procedures established for implementing Executive Order 11990.

*Coordination* — Secretary of Agriculture, Secretary of Interior.

12. Fish and Wildlife Coordination Act: 16 USC 661-666C (P.L. 85-624, 89-72, 95-616).

*Purpose* — Conservation, maintenance and management of wildlife resources.

*Applicability* — (1) Any project that involves impoundment (surface area of 10 acres or more), diversion, channel deepening or other modification of a stream or other body of water, and (2) transfer of property by Federal agencies to State agencies for wildlife conservation purpose.

*General Procedures* — Coordinate early in project development with USFWS and State fish and wildlife agency.

*Coordination* — DOI (USFWS), State fish and wildlife agencies.