



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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DENVER, CO 80202-2466

MAR 13 2002

Ref: R8-0200010

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RE: Certification of Nationwide Permits in
Indian Country Pursuant to Section 401
of the Clean Water Act

Dear Sirs:

This letter is in response to the Corps' Final Notice of Issuance of Nationwide Permits (NWP) listed in the Tuesday, January 15, 2002, Federal Register for Section 401 water quality certification. This water quality certification applies only to Indian Country within Environmental Protection Agency (EPA) Region 8 where Tribes have not assumed the Clean Water Act (CWA) 303 Water Quality Standards Program. The EPA has not received final regional conditions from the Corps. Therefore, if the ensuing 401 certifications need to be modified due to the regional conditions, we will do so upon receipt.

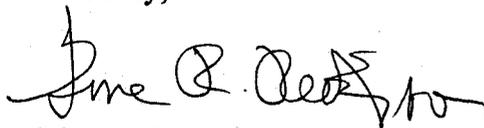
Based on our review of the 2002 Final NWP, we have denied certification on all waters for three NWP (#21, #33 and #44), and conditionally certified other NWP. We are requesting that the Corps notify potential project applicants that applications requiring EPA 401 certification be sent to both the Tribes and EPA. We have provided the Tribal contacts to your field offices.



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Your staff may contact Dave Ruitter (303-312-6794) of this office if there are questions concerning this certification.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Claggett". The signature is written in a cursive style with a large initial "R" and "C".

Richard T. Claggett, Chief
Wetlands and Watersheds Unit
Ecosystem Protection Program

Enclosure:

cc: State Water Quality Offices
Corps State Offices
Region VIII Tribes
Sadie Hoskie, Region 8

ENVIRONMENTAL PROTECTION AGENCY, REGION 8

**WATER QUALITY CERTIFICATION IN
ACCORDANCE WITH SECTION 401 OF THE CLEAN WATER ACT FOR
THE 2002 NATIONWIDE PERMITS IN INDIAN COUNTRY**

March 11, 2002

A. General Conditions for Nationwide Permits

1) Certification is denied for any activity affecting fens and springs.

Note: EPA adopts the definition of these aquatic resources as defined by the Corps in the 1999 Regional Conditions.

2) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment plants in wetlands.

3) This certification does not authorize construction of dams, except for stream restoration projects.

4) This certification does not authorize the construction of any portion of a facility for a confined animal feeding operation, including, but not limited to, the construction of buildings and sewage lagoons and/or livestock holding areas.

5) Wetland mitigation, including conversion of a forested wetland type to a herbaceous wetland, under these nationwide permits shall be completed prior to or concurrent with the project impacts.

6) For any general or specific nationwide permit conditions requiring notification in accordance with the notification general condition (i.e., Federal Register, Vol. 65, No. 47, Thursday, March 9, 2000, Part C.13 (e)), "Agency Coordination" for project activities shall include coordination with Native American Tribe or Tribes affected by such project activities.

7) This certification requires the use of certified weed-free hay with any revegetation of project areas for activities authorized under these nationwide permits.

8) This certification requires monitoring and control of invasive species after project completion pursuant to the Invasive Species Executive Order 13112.

9) This certification requires all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired prior

to the equipment being allowed on the project. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or removed from the project area. The equipment is not allowed to continue operating once the leak is discovered.

10) This certification does not authorize any unconfined discharge of liquid cement in waters of the U.S.. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the stream/lake.

11) All discharges must occur during the low flow or no flow period of the season.

B. SPECIAL CONDITIONS FOR SPECIFIC NATIONWIDE PERMITS

The following conditions are specific to each listed nationwide permit:

Nationwide Permit 3. Maintenance Activities

1. This certification is denied for discharges of any fill or dredged material that would result in an increase in land contour height beyond the original dimensions for the repair of low water crossings.
2. Silt and sediment removal associated with low water crossings shall be limited to a maximum of 50 linear feet.
3. Silt and sediment removal associated with bridge crossings shall be limited to a maximum of 100 linear feet.

Nationwide Permit 7. Outfall Structures and Maintenance

For construction and maintenance activities:

1. Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipeline should be oversized to prevent high pressure discharge of stormwater.
2. Certification is denied for construction of outfall structures in wetlands.
3. Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
4. This certification does not authorize structures for drainage activities that result in a loss of waters of the U.S. (e.g. tile systems).

Nationwide permit 12. Utility Line Activities

1. Certification is denied for activities in perennial drainages and wetlands.
2. Certification is denied for all water intake structures.

For activities in ephemeral and intermittent drainages the following conditions apply:

1. Crossings must be placed as close to perpendicular to the water course as possible.
2. Affected streambanks must be sloped such that the stream bottom width is not reduced and bottom elevations are restored to original elevations. Disturbed stream banks must be reconfigured to mimic a stable, naturally vegetated, portion of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream. If a natural/native stream reach is not available within the adjacent 1 mile reach, other natural portions of the drainage can serve as a reference condition.

Nationwide Permit 13. Bank Stabilization

1. For this certification to be valid, the use of root wads, tree trunks, planting of live vegetation, proper bank slopping or a combination there of will be used as bank stabilization structures. Native plants shall be planted in all disturbed areas and artificial soil stabilizing material (e.g. mulch, matting, netting etc) shall be used to reduce soil erosion. These materials, to include all plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

For the purpose of this condition "proper sloping" is defined as configuring the disturbed bank to mimic a stable portion of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream.

2. If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. The use of soil cement, concrete, grouted riprap, etc. is not certified.

Nationwide Permit 14. Linear Transportation Crossings

1. Stormwater resulting from both the construction and operation of these authorized projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.) in order to eliminate sediment and other pollutants prior to entry of stormwater into waters of the United States.

2. Affected streambanks must be sloped such that the stream bottom width is not reduced and bottom elevations are restored to original elevations.
3. Crossings must be placed as close to perpendicular to the water course as possible.
4. The upland and riparian areas adjacent to all sides of the crossing must be revegetated in all directions from the banks of the tributary with native vegetation that is common to the geographical area. Native plants shall be planted in all disturbed areas and artificial soil stabilizing material (e.g. mulch, matting, netting etc) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site prior to or upon completion of the earth moving activities.

Nationwide Permit 21. Surface Coal Mining Activities

Certification is denied.

Nationwide Permit 27. Stream and Wetland Restoration Activities

This certification does not allow conversion of one habitat type to another (e.g., wetlands to open water).

Nationwide Permit 33. Temporary Construction, Access and Dewatering

Certification is denied.

Nationwide Permit 37. Emergency Watershed Protection and Rehabilitation

1. In addition to the information specified in the general conditions 13(b) (Contents of Notification) the notification must include documentation that the work qualifies as an "exigency" situation and that immediate action will be taken if nationwide authorization is verified. Also, notification must include:

- a) a delineation of special aquatic sites;
- b) any spoil must be placed in an upland and controlled such that it cannot return to waters of the U.S.
- c) A delineation of riparian areas to be cleared and an analysis of alternatives to such clearing.

2. Certification is denied for discharges for which notification is submitted more than one year after the official conclusion of the emergency that caused the "exigency" situation.

3. Certification is denied for channelization of streams or sloughs or for removal of silt beyond what was deposited by the emergency. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its present condition.
4. Certification is denied for a discharge of fill or dredged material into special aquatic sites if a practicable alternative that does not involve discharges into a special aquatic site is available. If discharge into a special aquatic site is unavoidable, discharge must be minimized.
5. The disturbing or clearing of riparian areas shall be minimized to only enough space to provide equipment access.
6. Construction of temporary structures or drains for the purpose of reducing or preventing flood damage is certified if the site is returned to pre-flood condition within 60 days following the emergency.
7. Repair of permanent structures damaged by flood waters is certified to the extent that it returns the structure to pre-flood condition.

Nationwide Permit 39. Residential, Commercial and Institutional Activities

1. Certification is denied for discharges into wetlands, intermittent or perennial drainages.
2. All soils disturbed by the activity must be revegetated immediately upon completion of the project. Native plants shall be planted in all disturbed areas and artificial soil stabilizing material (e.g. mulch, matting, netting etc) shall be used to reduce soil erosion. These materials, to include all plants and plant seed shall be on site prior to or upon completion of earth moving activities.

Nationwide Permit 40. Agricultural Activities

1. Certification is denied for the construction of new levees, ditches, or drainage activities.
2. Certification is denied for the construction of building pads causing the loss of greater than 1/10 acre of wetlands for both USDA program participants and non-participants.

Nationwide Permit 41. Reshaping existing Drainage Ditches

1. Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for a period not to exceed 60 days.

2. Clearing of riparian corridors must be limited to the minimum necessary for project construction. Clearing limits must be specified in the construction contract.

Nationwide Permit 42. Recreation Facilities

1. Certification is denied for the construction of parking lots, golf course, golf course buildings, ponds and reservoirs, ski areas and ski infrastructures.

2. Certification is denied for discharges resulting in the loss of more than 100 linear feet of channel, streambank, and/or wetlands for a single and complete project.

3. Clearing of riparian corridors and wooded and scrub shrub areas must be limited to the minimum necessary for project construction. Clearing limits must be specified in the construction contract both on a drawing or map and in a narrative.

Nationwide Permit 43. Stormwater Management Facilities

Certification is denied for the construction of new stormwater management facilities.

Nationwide Permit 44. Mining Activities

Certification is denied.