

Section 401 Water Quality Certifications

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US Army Corps of Engineers
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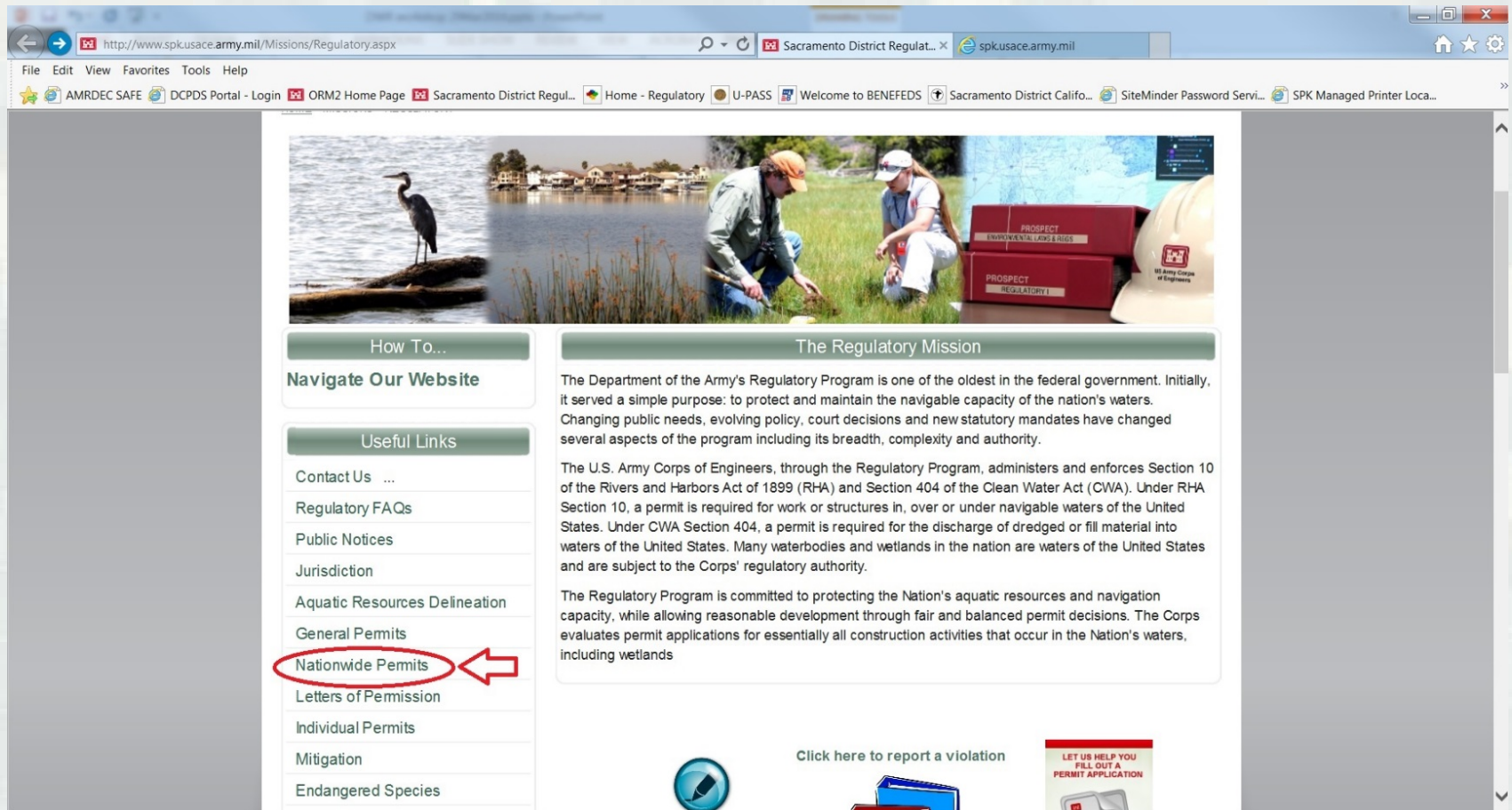
NWP General Condition

❖ 25 Water Quality:

- 401 Certification is required prior to work in WOUS. Corps may send a provisional NWP verification that states the work is denied without prejudice until you obtain a 401 Certification.
- Remember: **No work may begin under authority of a NWP until the Section 401 WQC has been issued or waived. Conditions of the Section 401 WQC become conditions of the USACE NWP verification.**



http://www.spk.usace.army.mil/Missions/Regulatory.aspx



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The Regulatory Mission

The Department of the Army's Regulatory Program is one of the oldest in the federal government. Initially, it served a simple purpose: to protect and maintain the navigable capacity of the nation's waters. Changing public needs, evolving policy, court decisions and new statutory mandates have changed several aspects of the program including its breadth, complexity and authority.

The U.S. Army Corps of Engineers, through the Regulatory Program, administers and enforces Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA). Under RHA Section 10, a permit is required for work or structures in, over or under navigable waters of the United States. Under CWA Section 404, a permit is required for the discharge of dredged or fill material into waters of the United States. Many waterbodies and wetlands in the nation are waters of the United States and are subject to the Corps' regulatory authority.

The Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while allowing reasonable development through fair and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.

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Section 401 Water Quality Certifications

For any activity that may result in a discharge of a pollutant into waters of the U.S., prospective permittees must obtain a Section 401 Certification, or waiver thereof, from the appropriate State, authorized Tribe, or the Environmental Protection Agency (EPA) for activities located on tribal lands in which a tribe does not have Section 401 Certification authority. The Section 401 Certification, or waiver, is required prior to the commencement of any activity under a NWP. In accordance with GC 25, where States and authorized Tribes, or EPA have not previously certified compliance of an NWP with Section 401 of the Clean Water Act, individual 401 Water Quality Certification must be obtained or waived (see 44 CFR 330.4(c)). Any Section 401 Certification that has been issued for the proposed project activities becomes a Special Condition of the NWP verification. The following Section 401 Water Quality Certifications have been issued for the activities authorized by the 2012 NWPs:

- State of California
- State of Colorado
- State of Nevada
- State of Utah
- EPA, Region 8 for Colorado and Utah
- EPA, Region 9
- Ute Mountain Ute Tribe
- Pyramid Lake Paiute



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Commencement of Construction Activities Under a NWP




The prospective permittee may not begin construction of an activity under a NWP until either: (1) he or she is notified in writing by the District that the activity may proceed under the NWP with any special conditions imposed; or (2) 45 calendar days have passed from the District's receipt of the complete PCN and the prospective permittee has not received written notice from the District. However, the 45 calendar day limit does not apply in the following circumstances:



http://www.spkusace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/CA-2012-NWP-401-Cert-w-attf Sacramento District > Missions... spkusace.army.mil

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State Water Resources Control Board

APR 19 2012

Colonel William J. Leady, P.E.
District Commander
U.S. Army Engineer District, Sacramento
Corps of Engineers
1325 J Street
Sacramento, CA 95814-2922

Dear Colonel Leady:

**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION OF 2012
NATIONWIDE PERMITS**

The previous U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWPs) became effective on March 19, 2007, and expired on March 18, 2012.

In your letter of February 23, 2011, the State Water Resources Control Board (State Water Board) was informed of the notification in the Federal Register regarding proposed NWPs for 2012. (76 Fed. Reg. 9174-01 (Feb. 16, 2011).) The State Water Board subsequently received notice of the final NWPs on February 21, 2012. (77 Fed. Reg. 10184-01 (Feb. 21, 2012).) This notice served as the Corps' complete application for a water quality certification (certification). In your letter of February 29, 2012, you requested that the State Water Board review the newly issued NWPs and determine whether to certify, certify with conditions, or deny certification pursuant to Clean Water Act section 401 (33 U.S.C. § 1341).

In addition to the Corps' notice in the Federal Register, the State Water Board also posted notice of the Corps' application for certification of the NWPs on our 401 Program web page at: http://www.waterboards.ca.gov/water_issues/programs/cwa401/notices.shtml on February 27, 2012, for a 45 day noticing period which ended on April 12, 2012.

State Water Board staff reviewed the newly issued NWPs, considered comments received, and

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401 Water Quality Certification of the 2012 NWP

- The State Water Board elects to issue certification for 13 of the 52 NWPs covering activities that are categorically exempt from CEQA
- Order for Technically Conditioned Certification



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13 NWP's granted Certification

- NWP 1- Aides to Navigation
- NWP 4- Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5- Scientific Measuring Devices
- NWP 6- Survey Activities
- NWP 9- Structures in Fleeting and Anchorage Areas
- NWP 10- Mooring Buoys



13 NWP's (cont'd)

- NWP 11- Temporary Recreational Structures
- NWP 12- Utility Line Activities
- NWP 20- Response Operations for Oils and Hazardous Substances
- NWP 22- Removal of Vessels
- NWP 28- Modifications of Existing Marinas
- NWP 32- Completed Enforcement Actions
- NWP 36- Boat Ramps



What about the rest of the NWP's?

- 401 certification of projects authorized will be considered on an individual, project-specific basis
- **Remember: No work may begin under authority of a NWP until the Section 401 WQC has been issued or waived. Conditions of the Section 401 WQC become conditions of the USACE NWP verification.**



Questions

Contact Information:

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