



Terry Tamminen
Secretary for
Environmental
Protection

State Water Resources Control Board

Executive Office

Arthur G. Baggett Jr., Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.swrcb.ca.gov>



Arnold Schwarzenegger
Governor

MAR 30 2004

APR -5 2004

Mr. Andrew J. Rosenau
Chief, Regulatory Branch
Department of the Army
U.S. Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Dear Mr. Rosenau:

ORDER FOR TECHNICALLY-CONDITIONED WATER QUALITY CERTIFICATION: REGIONAL GENERAL PERMIT 60 FOR REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS (RGP 60) (CORPS FILE NUMBER 19970052)

This Order responds to your February 23, 2004 request for Clean Water Act section 401 Water Quality Certification for the U.S. Army Corps of Engineers (USCOE), Sacramento District re-issuance of RGP 60 (Enclosure 1). This certification is intended to streamline the approval process for dredge and fill activities necessary to prevent or mitigate an emergency.

ACTION

- | | |
|---|---|
| ☐ Order for Standard Certification | |
| ☒ Order for Technically-Conditioned Certification | ☐ Order for Waiver of Waste Discharge Requirements |
| ☐ Order for Denial of Certification | |

STANDARD CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR).
2. This certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

California Environmental Protection Agency

3. This certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23, and owed by the applicant.

ADDITIONAL CONDITIONS:

1. This certification is limited to emergency actions that meet the California Environmental Quality Act (CEQA) definition of "emergency" and are exempt from CEQA requirements. Under CEQA, California Public Resources Code, Division 13, section 21060.3, an "emergency" is defined to be:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

2. Emergency projects exempt from the requirements of CEQA are defined by CCR, Title 14 (CEQA Guidelines), section 15269 as:
 - (a) *Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant of the California Emergency Services Act, commencing with section 8550 of the Government Code.*
 - (b) *Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.*
 - (c) *Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.*
 - (d) *Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the projects is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highway designated as official State scenic highways, nor any project undertaken, carried out, or approved by public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.*
 - (e) *Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.*

3. Permitted activities shall not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters, as adopted in the Water Quality Control Plan (Basin Plan) of a Regional Water Quality Control Board (RWQCB) or in a Statewide Plan adopted by the State Water Resources Control Board (SWRCB).
4. Simultaneous with submittal to USCOE, permittees shall transmit copies of (a) the "Construction Notification" required by RGP 60 General Condition No. 1 (Notification), and (b) the "Post-Project Construction Final Report" required by Condition No. 28 (Post-Project Reports) to the SWRCB and the appropriate RWQCB(s), addressed as:

Program Manager
401 Water Quality Certification Program
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento CA 95812-0100

Program Manager
401 Water Quality Certification Program
(Address of appropriate RWQCB(s))

The applicant shall provide a fee of \$60 for review and processing of the notice in accordance with CCR Title 23, section 2200. If the applicant is not contacted by the RWQCB within 30 days of the postmarked date of the "Construction Notification," the applicant may assume that the project meets the conditions of this certification order and may proceed with the project.

5. Permitted activities shall not result in the taking of any State endangered species, threatened species, or candidate species or the habitat of such a species unless the activity is authorized by the Department of Fish and Game (DFG) pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.

WATER QUALITY CERTIFICATION:

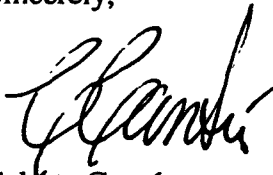
I hereby issue an order certifying that any discharge from activities authorized by RGP 60 will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements (GWDR) for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Water Quality Certification. This GWDR can be accessed at <http://www.swrcb.ca.gov/cwa401/index.html>.

MAR 30 2004

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with the applicants' project description (Enclosure 2) and the enclosed Project Information Sheet (Enclosure 3).

If you have any questions, please contact Ruben A. Guieb, Environmental Scientist, at (916) 341-5464 or email: guier@swrcb.ca.gov. You may also call Oscar Balaguer, Chief of the Water Quality Certification Unit, at (916) 341-5485 or balao@dwq.swrcb.ca.gov.

Sincerely,



Celeste Cantú
Executive Director

Enclosures (3)

cc: Mr. Glen Gentry
Nevada Division of Environmental Protection
Bureau of Water Quality Planning
333 West Nye Lane, Suite 138
Carson City, Nevada 89706-0851

Mr. Tim Vendlinski
Wetlands Regulatory Office (WTR-8)
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Administrator— Acting
Jolaine Johnson and Leo Drozdoff

(775) 687-4670

Administration
Facsimile 687-5856

Water Quality Planning
Water Pollution Control
Facsimile 687-4684

Mining Regulations and
Reclamation
Facsimile 684-5259

State of Nevada
KENNY C. GUINN
Governor



ALLEN BIAGGI, Director

Air Pollution Control
Air Quality Planning
Facsimile 687-6396

Waste Management
Federal Facilities

Corrective Actions
Facsimile 687-8335

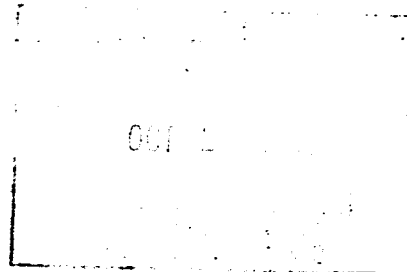
ndep.nv.gov

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

333 W. Nye Lane, Room 138
Carson City, Nevada 89706

October 12, 2004

Andrew J. Rosenau, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922



Dear Mr. Rosenau:

Nevada Division of Environmental Protection (NDEP) issues 401 Certification for the Regional General Permit 60 (PN 199700652) for Repair and Protection Activities in Emergency Situations with the following conditions.

Prior to beginning any activity authorized by this Regional General Permit, this office must receive notification which shall fully describe the project and its location, purpose and need, and the immediate project area. The notification shall also include the name, address and telephone numbers of the permittee and the authorized agent's name, address and phone number if different than the permittee. The address and phone number for submittal of this information is:

Nevada Division of Environmental Protection
Bureau of Water Quality Planning
Attn: Glen Gentry
333 W. Nye Lane, Room 138
Carson City, Nevada 89706-0851
Phone (775) 687-9448
Fax (775) 687-5856
email gentry@ndep.nv.gov

The permitted activity shall not cause a violation of any applicable water quality standards as defined in the Nevada Administrative Code (NAC) 445A.119 – 445A.225

Prior to commencing work in any waterbody or waterway, appropriate Best Management Practices (BMP) must be properly installed and maintained throughout the project construction period until all disturbed areas are stabilized. If straw bales are selected as BMPs they should be certified as weed free.

Cleared areas shall be revegetated with native plants and seed as soon as possible. Work areas shall be restored to maintain the stability of upstream and downstream segments of the waterway to control erosion and sedimentation.

The permittee shall use a designated area for chemical and petroleum storage, solid waste containment, and equipment washing. This designated area shall be located outside of waters of the state and drainages which could allow the material to enter any waters of the state.

The permittee is responsible for ensuring construction material and/or fill, placed within the ordinary high water mark, be free from substances that can cause or contribute to pollution of a surface water.

Any modifications to the original project submittal must be reviewed and approved by this office prior to implementation.

If the project requires a Temporary Permit for Working in Waterways, all conditions of NDEPs Temporary Authorization Permit (Construction/Dewatering) or any other permit issued by NDEP for the project must be followed.

This Section 401 Water Quality Certification is subject to the acquisition of all necessary local, regional, state and federal permits and approvals as required by law. Failure to meet any conditions of this 401 Water Quality Certification or the Temporary Authorization Permit (Construction/Dewatering Permit) or any other permit issued by NDEP for this project or any violation of NAC 445A may result in the revocation of this 401 Water Quality Certification.

If you have any question please give me a call.

Sincerely yours,



Glen Gentry
Monitoring Branch Supervisor
Bureau Water Quality Planning

Cc: Richard Gebhart, USACOE Reno Field Office
Icyl Mulligan, NDEP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 19 2004

Andrew J. Rosenau, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, Room 1480
Sacramento, CA 95814-2922



Subject: Waiver of Water Quality Certification under CWA§401 Involving Emergency
Repair and Protection Activities on Tribal Lands Authorized by RGP #60
(199700652)

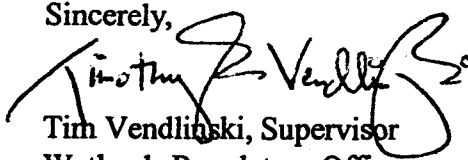
Dear Mr. Rosenau:

We are writing to waive water quality certification under Clean Water Act (CWA) Section 401 associated with repair and protection activities taking place on tribal lands in emergency situations. Our waiver is dependant on the adherence of the prospective applicants to the terms and conditions detailed in your *Regional General Permit #60 for Repair and Protection Activities in Emergency Situations*.

As you know, under CWA§401, most states and some eligible tribes have the authority to condition, deny, approve, or waive certification of any federal license or permit resulting in discharges to their waters. In cases where the states or tribes do not have the authority to issue such certifications, EPA has the authority to do so under CWA§401(a). On 15 March 2002, EPA denied water quality certification for twelve (12) nationwide permits (NWP) as they apply to tribal lands corresponding with the boundaries of our Southwest Pacific Region (attached). This means that EPA serves as the permit-writing agency for water quality certifications as they apply to these particular NWP. The waiver we are offering in this letter applies even to these NWP during emergency situations deemed legitimate by the Sacramento Corps District.

Thank you for considering our concerns and recommendations. If you wish to discuss this matter further, please call me at (415) 972-3464.

Sincerely,


Tim Vendlinski, Supervisor
Wetlands Regulatory Office

attachment: EPA's denial of water quality certification for twelve (12) NWP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAR 15 2002

General Robert L. Davis
U.S. Army Corps of Engineers
South Pacific Division
333 Market Street
San Francisco, California 94105-2197

Attn: Mr. Wade Eakle

Subject: EPA's Denial of Water Quality Certification for Twelve Nationwide Permits on Tribal Lands

Dear General Davis:

As you know, under the Clean Water Act (CWA) Section 401, most states and some eligible tribes have the authority to condition, deny, approve, or waive certification of any federal license or permit that may result in discharges to their waters. In cases where the state or tribe does not have authority to issue such certifications, EPA has the authority to do so under CWA §401(a). Currently, we have the authority to issue certifications on tribal lands coinciding with the boundaries of your Division's District Offices based in Los Angeles, Sacramento, and San Francisco, as well as the Navajo Tribal Lands in New Mexico. Both the Hoopa Tribe and the White Mountain Apache Tribe have become authorized to condition, deny, approve, or waive certification for Nationwide Permits (NWP's).

As you are also aware, several of the old permits (including some for which we previously denied water quality certification) expired on 11 February 2002, and reissuance for these permits will not be effective until all of the new NWP's take effect 18 March 2002. As a supplement to our letter of 24 September 2001 (attached), we are responding to the Federal Register Notice published by the Corps on 15 January 2002 regarding the reissuance of the NWP's for discharge of dredge or fill materials into waters of the United States.

In the interim between the expiration and reissuance dates, we are reaffirming our denial of §401 certification on the eleven Nationwide Permits outlined in our letter of 24 September 2001, and deny water quality certification for Nationwide 21: Surface Coal Mining Activities. Coal mining can affect significant expanses of landscape and impact waters of the United States through myriad means, and the language authorizing activities under Nationwide 21 is too broad to warrant generic water quality certification from EPA. Therefore, by way of summary, the

following list of twelve Nationwide Permits are denied §401 certification on tribal lands within EPA Region IX:

- NWP 3 Maintenance
- NWP 7 Outfall Structures and Maintenance
- NWP 12 Utility Line Activities
- NWP 14 Linear Transportation Projects
- **NWP 21 Surface Coal Mining Activities**
- NWP 31 Maintenance of Existing Flood Control Facilities
- NWP 39 Residential, Commercial and Institutional Developments
- NWP 40 Agricultural Activities
- NWP 41 Reshaping Existing Drainage Ditches
- NWP 42 Recreational Facilities
- NWP 43 Stormwater Management Facilities
- NWP 44 Mining

On 8 January 2002, Corps Districts based in San Francisco, Los Angeles, and Sacramento afforded us the opportunity to discuss the NWP program, the proposed Regulatory Guidance Letter on mitigation policy, and the need for NWP regional conditions. As regional conditions are developed and finalized, we hope to reduce the list of activities where water quality certification is denied.

Sincerely,

Robert A. Leidy for

Tim Vendlinski
Supervisor
Wetlands Regulatory Office

attachment: EPA letter to the Corps (9/24/01)

cc: Sacramento Corps District
San Francisco Corps District
Los Angeles Corps District
Albuquerque Corps District
Applicable Tribal Governments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

SEP 24 2001

**Colonel (P) Robert L. Davis
U.S. Army Corps of Engineers
South Pacific Division
333 Market Street
San Francisco, California 94105-2197
Attn: Mr. Wade Eakle**

Subject: Clean Water Act Section 401 Certification for Nationwide Permits on Tribal Lands

Dear Colonel Davis:

We are writing in response to the Federal Register Notice published by the Corps on 9 August 2001 regarding the intent to modify and reissue the nationwide permits (NWP) designed to permit those discharges of fill material into waters of the United States that result in minimal impacts. These permits are scheduled to become effective by 11 February 2002.

As you know, under Clean Water Act (CWA) Section 401, most states and some eligible tribes have the authority to condition, deny, approve, or waive certification of any federal license or permit that may result discharges to their waters. In cases where the state or tribe does not have authority to issue such certifications, USEPA has the authority to do so under CWA§401(a). Currently, we have the authority to issue certifications on tribal lands coinciding with the boundaries of your Division's District Offices based in Los Angeles, Sacramento, and San Francisco, as well as the Navajo Tribal Lands in New Mexico. The only exceptions involve the Hoopa Reservation and the White Mountain Apache Reservation -- both of these tribes have the authority to condition, deny, approve, or waive certification.

Of the forty-four NWPs being proposed in the Federal Register, we are concerned that implementation of the following eleven permits might result in adverse impacts to waters of the United States that are greater than the threshold for minimal impacts. Our concerns with most of these NWPs date back to their formulation to replace NWP 26. Within the boundaries of USEPA Region IX, tribal lands extend from the Oregon border to the deserts of New Mexico. The proposed NWPs would involve a broad spectrum of activities affecting a vast array of ecological and hydrological conditions. Thus, developing regional conditions to control adverse impacts to water quality remains a great challenge for our agencies. Therefore, until we can devise regional conditions to strengthen the proposed permits, we hereby deny certification for the use of the following eleven NWPs on tribal lands within the South Pacific Division except where stated above:

- NWP 3 Maintenance
- NWP 7 Outfall Structures and Maintenance
- NWP 12 Utility Line Activities
- NWP 14 Linear Transportation Projects
- NWP 31 Maintenance of Existing Flood Control Facilities
- NWP 39 Residential, Commercial and Institutional Developments
- NWP 40 Agricultural Activities
- NWP 41 Reshaping Existing Drainage Ditches
- NWP 42 Recreational Facilities
- NWP 43 Stormwater Management Facilities
- NWP 44 Mining

On 14 September 2001, I received a letter from Art Champ at the Sacramento Corps District regarding the CWA§401 certifications on tribal lands within California and Nevada. In the letter, he requested a meeting on behalf of the Corps Districts in Los Angeles, Sacramento, and San Francisco to discuss issues of concern, and to identify ways to address these concerns, e.g., regional conditions, scope of waters, activities, and notification. We accept the Corps' invitation and suggest that your staff call Tim Vendlinski from our Wetlands Regulatory Office to arrange such a meeting (415.744.2276). If you wish to discuss this matter with me, please don't hesitate to call me at 415.744.1860.

Sincerely,



Alexis Strauss

Director

Water Division

cc: Sacramento Corps District
 San Francisco Corps District
 Los Angeles Corps District
 Albuquerque Corps District
 Applicable Tribal Governments