

**USEPA Region 7 Clean Water Act Section 401 Water Quality Certification for
Corps of Engineers CWA Section 404 Nationwide Permits
for Activities/Projects located in Indian Country within the State of Iowa**

Section 404 Permit: Nationwide Permits
Description: NWP's are a type of general permit issued by the Corps of Engineers for discharge (dredge and fill) activities having minimal impacts.

Indian Country: Omaha Tribe of Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, and Winnebago Tribe of Nebraska

Background:

Section 401 of the CWA (Public Law 95-217), as amended in 1977, requires that an applicant for a federal permit such as CWA Section 404 nationwide permit must obtain certification that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. All NWP's require a certification prior to issuance; therefore, this certification is a condition of these federal permits.

Presently, the tribes in Region 7 do not have EPA-approved water quality standards or Section 401 certification programs for the purpose of issuing 401 certifications on water resources within the borders of an Indian reservation and therefore cannot issue certification. In the absence of such EPA-approved programs, EPA makes the certification determination. In determining water quality standards for certification, the EPA considers any tribal, federal, adjacent state standards, and any EPA guidance for the water quality standards program such as water quality criteria published under Section 304(a) of the CWA and the Water Quality Standards Handbook. The EPA also consults with affected federally recognized tribes regarding their concerns when evaluating federal permits for certification under Section 401 of the CWA.

On February 23, 2012, the EPA provided joint public notice with the Corps and an opportunity to comment on the EPA's consideration of certification of NWP's. No comments were received by the EPA during the public comment period.

Determination:

On the basis of the final NWP's, and as provided under Section 401(a)(1) of the CWA, EPA certifies that when the general conditions are met, the NWP's (*except* those denied certification herein), will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306, and 307. This Certification reasonably ensures that discharges in compliance with the limitations and conditions of the NWP's and the conditions herein will not violate applicable water quality standards or any applicable effluent guidelines or standards.

This NWP Certification includes two types of certification determinations.

- Denied – Certification is denied for certain proposed projects/activities. An individual certification from EPA will be necessary. EPA Region 7 will do an individual review of the application for the NWP. The individual certification may result in additional conditions and/or mitigation requirements. The Corps and EPA will coordinate on this process. Note: If EPA fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of a completed request for certification, the certification requirements shall be waived with respect to such proposed permit, see CWA Section 401 (a)(1).
- Approved – Certification is approved with general conditions

Denied:

The following activities are denied water quality certification:

- Any proposed activity/project including a dam or other impoundment located within a stream
- Any proposed activity/project that would require a waiver under the following NWPs: 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, and 52.

Applicants proposing projects that would exceed a limit of one or more of these NWPs are encouraged to pursue alternative forms of authorization from the Corps such as an individual permit or further reduce and minimize impacts within the proposed activities/projects areas.

- Any proposed activity/project that will discharge to a waterbody within ½ mile upstream of a state-listed impaired waterbody (see state 303(d) lists) *and* the discharge may result in increased impact of an impairment. The state 303d lists within Region 7 (Iowa, Kansas, Missouri, and Nebraska) can be found at:
<http://www.epa.gov/region7/newsevents/legal/>.

Approved:

All NWPs proposed activities/projects not denied water quality certification are hereby approved. EPA Region 7 approves NWP proposed activities/projects *provided* they comply with the general conditions described in this certification and where there is reasonable assurance that the proposed activities/projects will comply with the applicable provisions of the CWA.

General Conditions:

The following general conditions apply to all NWPs with water quality certification approved.

- This certification does not relieve the applicant of the responsibility to comply with applicable local, tribal, state, federal regulations or statutes, including regulations affecting any discharge into waters of the U.S.
- Copies of this certification shall be kept on the job site and readily available for reference by tribal members, Corps personnel, EPA personnel, the construction supervisor, construction managers and foremen.
- If the project is constructed and/or operated in a manner not consistent with the NWP, the permittee will be in violation of this certification.
- Any emergency or otherwise future action at the project location that is not defined in the project description in the attached permit is not covered by this certification; therefore, the applicant must reapply with an updated application.
- During construction and upon completion of the project, all practicable measures and precautions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, temperature, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering waters of the U.S., including wetlands.
- All equipment operated within any water of the U.S must be cleaned away from waters of the U.S. and maintained to prevent fuel and oil leaks. These methods include, but are not limited to: off-site/upland fuel and oil storage and refueling areas, on-site spill containment equipment, a spill contingency plan, and spill prevention/contaminant training for on-site personnel.
- Should a spill of petroleum products or chemicals occur, immediately call the National Response Center at (800) 424-8802 and the appropriate Tribal Environmental Office.
- Ground disturbance shall not exceed the minimum necessary to complete the project.
- All projects using NWPs must avoid discharges to the maximum extent practicable, and utilize the best available and practicable means of minimizing the adverse impact of discharges that cannot be avoided. In some cases, compensatory mitigation may be required in addition to the avoidance and minimization measures. Compensatory mitigation projects must comply with the Corps Regulatory Program and EPA adopted requirements and standards to improve compensatory mitigation practices for offsetting losses of aquatic resource functions [33 CFR part 332 on April 10, 2008 (73 FR 19594)]. The rule is available at: http://www.epa.gov/owow/wetlands/pdf/wetlands_mitigation_final_rule_4_10_08.pdf
- Native vegetation, especially riparian corridors, should be protected during construction with locations disturbed by construction activities returned to pre-project conditions. This shall

include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation lost during construction to establish permanent cover.

- Any bank stabilization activities should utilize bioengineering techniques (e.g. willow plantings, root wads, large woody debris, etc.) or combination of hard-armoring (e.g. rock) and bioengineering techniques to the maximum extent practicable.
- Non-native plant species such as reed canarygrass (*Phalaris arundinacea*), Caucasian bluestem (*Bothriochloa bladhii*), smooth brome (*Bromus inermis*), crownvetch (*Securigera varia*), and bird's-foot trefoil (*Lotus corniculatus*) are NOT appropriate as revegetation plantings for erosion control measures, restoration, and/or mitigation. The use of native plant species is strongly encouraged.
- Measures shall be taken to prevent the spread of invasive species. Project locations containing invasive species should be treated using appropriate control methodologies before construction begins to reduce the potential for off-site spread. Clean and certified weed-free seed should be used for vegetative restoration projects. Propagative materials (seeds, plugs, plants, etc.) containing any Federal- or State-listed Noxious Weed and/or Watch List Plant Species should be rejected.
- All straw and/or mulch hay used for erosion control measures, restoration, and/or mitigation should be certified as weed free using North American Weed Free Forage Program standards.

Iowa Noxious Weed Seed Free Forage & Mulch Program

http://www.agron.iastate.edu/icia/Forage_Mulch.htm

Kansas Certified Weed Free Forage and Mulch Program

http://www.ksda.gov/plant_protection/content/353

Missouri Crop Improvement Association - Weed Free Hay & Forage Program

<http://www.moseed.org/WeedFreeForage.htm>

Nebraska Weed Free Forage Program

<http://neweedfree.org/Default.aspx>

If you have questions regarding this certification, contact EPA Region 7 at (913) 551-7003 or 1-(800)-223-0425 and ask to speak to someone about water quality certification for Section 404 permits.

Certification Approved by EPA Region 7