



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

11201 Renner Boulevard
Lenexa, Kansas 66219

FEB 24 2017

Mr. Joey Shoemaker
Project Manager – Iowa Section
Corps of Engineers, Regulatory Branch
U.S. Army Corps of Engineers, Rock Island
Clock Tower Building
P.O. Box 2004
Rock Island, Illinois 61204-2004

Dear Mr. Shoemaker:

This letter completes the Environmental Protection Agency Region 7's consideration of water quality certification for final Corps of Engineers Clean Water Act Section 404 nationwide permits as effective in Indian country. This letter transmits the EPA Region 7's CWA Section 401 water quality certification for Indian country. When the Nationwide Permits are reissued, please let us know that our certification is on your website for viewing by the public. Thank you.

The EPA appreciates the Corps coordination during this process. We especially want to thank your district for incorporating our suggested tribal regional condition regarding notification. This will help the Tribes as well as our agency with transparency of the process. We also believe coordination efforts between our agencies and the Tribes will aid in the protection of the environment and public health. If you have Section 401 matters, please contact Jennifer Ousley of my staff at (913) 551-7498, or ousley.jennifer@epa.gov for assistance.

Sincerely,

A handwritten signature in black ink that reads "Steve Kovac".

Steve Kovac
Chief

Watershed Planning and Implementation Branch

Enclosure



Enclosure
U.S. Environmental Protection Agency, Region 7
Clean Water Act Section 401 Water Quality Certification for
U.S. Army Corps of Engineers CWA Section 404 Nationwide Permits Reissuance

Location: Projects proposed in Indian Country within the following Corps Districts as relevant: Kansas City District, Omaha District, and Rock Island District.

Indian country includes the following: Iowa Tribe of Kansas and Nebraska, Kickapoo Tribe of Kansas, Omaha Tribe of Nebraska, Prairie Band Potawatomi Nation, Ponca Tribe of Nebraska, Sac and Fox Nation of Missouri in Kansas and Nebraska, Sac and Fox Tribe of the Mississippi in Iowa, Santee Sioux Nation of Nebraska, and Winnebago Tribe of Nebraska

Description: NWP's are a type of general permit issued by the COE for discharge (dredge and fill) activities having minimal impacts. For more information on NWP's, go to: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits>.

Permit Type: Nationwide Permits Reissuance

401 BACKGROUND:

Section 401 of the CWA requires that an applicant for a federal permit (such as a COE CWA Section 404 NWP) must obtain water quality certification that the discharge will comply with the applicable provisions of the CWA. Activities/projects can be authorized under a NWP only if that activity and the permittee satisfy all of the COE's NWP's terms and conditions, including water quality certification.

Presently, the tribes in Region 7 do not have the EPA-approved water quality standards or Section 401 certification programs. In the absence of such certification program, the EPA makes the certification determination. *Therefore, this Certification is a condition of the COE CWA Section 404 NWP's as applied within EPA Region 7 Indian country within each COE District noted above.*

DETERMINATION:

DENIED:

The following activities/projects are denied water quality certification. Therefore applicants must apply for an EPA Region 7 individual water quality certification. Please note: 1) an individual certification involves at least a 60 day process from receipt of a complete certification application and 2) an individual certification may result in additional technical comments/assistance, conditions and/or mitigation requirements.

- Any proposed activity/project that requires a pre-construction notice in accordance with NWP General Condition 32 related to a waiver to allow the permittee to exceed the limits of the nationwide permit.
- Any proposed activity/project involving the installment of a dam or other type of impoundment.
- Any proposed activity/project that impacts a fen, bog, seep or sedge meadow.
- Any proposed activity/project under NWP 53 related to removal of low head dams.

APPROVED WITH CONDITIONS:

All NWP (or activity authorized under a NWP) not listed as denied above are approved *provided* they comply with the 401 conditions described below.

401 CONDITIONS:

- During project planning, EPA highly recommends the permittee notify the appropriate tribal environmental office of the project details and location.
- Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference.
- As noted in the NWPs General Condition 23, the project should avoid and minimize impacts to the maximum extent practicable. In addition, EPA highly recommends that projects incorporate the following, but not limited to, best protective measures and management practices:
 - All practicable measures and precautions should 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. should 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 oils storage and refueling areas, on-site spill containment equipment, a spill contingency plan, spill prevention/contaminant training for on-site personnel, and spill communication plan. Should a spill of petroleum products or chemicals occur, permittee agrees to immediately call the National Response Center at (800) 424-8802 and the appropriate Tribal Environmental Office.
 - 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. Ground disturbance should be minimized to that necessary to complete the project.
- As noted in the NWPs, native plants appropriate for site conditions must be used for bioengineering or vegetative stabilization. In addition for all types of or phases in projects, EPA highly recommends the following, but not limited to, best management practices:
 - 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.
 - Non-native plant species such as reed canary grass (*Phalarix 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.
 - Measures should be taken to prevent the spread of invasive species. Project locations containing invasive species should be treated using appropriate control methodologies before construction activities begin 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.
- Straw and/or mulch hay used for erosion control measures and/or vegetation restoration should be certified as weed free using the North American Invasive Species Management Association's Weed Free Forage Standard. Please refer to the standard at: <http://www.naisma.org/weed-free-forage>.

If you have questions regarding this certification for COE CWA Section 404 Nationwide Permits or if you need to request an EPA individual water quality certification, contact Jennifer Ousley at the EPA Region 7 at ousley.jennifer@epa.gov.

CERTIFICATION APPROVED BY EPA REGION 7:

2/29/17
Date



Steve Kovac, Chief
Watershed Planning and Implementation Branch
Water, Wetlands and Pesticides Division