



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

MAY 10 2007

Dan Johnson, Chief of the Regulatory Branch
U.S. Army Engineer District, Rock Island
P.O. Box 2004 (Clock Tower Building)
Rock Island, IL 61204-2004

Dear Mr. Johnson:

This letter follows issuance in the Federal Register dated March 12, 2007, of the 60-day deadline to complete the Water Quality Certification for final nationwide permits (NWP) that will result in a discharge to waters of the United States. Section 401 of the Clean Water Act (CWA) (Public Law 95-217), as amended in 1977, requires that an applicant for a federal permit, such as an NPDES permit, must obtain certification that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the CWA. Presently, the Tribes in Region 7 do not have approved water quality standards or Section 401 authority for the purpose of regulating water resources within the borders of an Indian reservation pursuant to Section 518(e) of the CWA. In the absence of such authority, as the federal trust agency for the nine Indian Tribes in our region, EPA is providing you with our final recommendation for certification that would be applicable to the NWPs in Indian Country pursuant to Section 401 of the CWA.

In issuing certifications, Environmental Protection Agency (EPA) considers guidance for any tribal, federal, and/or 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. EPA also consults with affected federally recognized tribes regarding their concerns.

The certification provided herein is being issued under CWA Section 401 (Public Law 95-217), as amended in 1977, and ensures that the certified project is consistent with applicable water quality standards. As stated under Section 101(a)(2) of the CWA, water quality of all waters of the U.S. must provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in or on the water. Additionally, projects under all NWPs will be certified so water quality in Indian Country will be maintained consistent with the adjacent State of Iowa protection according to Iowa Administrative Code Chapter 61.

Water quality certification is denied for the following activities:

- discharge of dredged or fill material located ½ mile upstream of waters, wetlands, or wetlands adjacent to waters wetlands or wetlands adjacent to waters of the U.S. that are listed under 303(d) of the Clean Water Act for the state of Iowa (see <http://www.epa.gov/OWOW/tmdl/index.html> for a map and list of impaired waters).
- discharge of dredged or fill material located ½ mile upstream from waterbodies designated as High Quality Resource Waters in Chapter 61 – Iowa Administrative Code (see <http://www.iowadnr.com/water/standards/index.html>) for a list of those waters).
- discharge of dredge or fill material into fens, bogs, seeps, sedge meadows, springs, prairie potholes, and/or forested wetlands.
- any activity on an intermittent or ephemeral stream that exceeds the length and/or volume limits under NWP's 13, 29, 39, 40, 41, 42, and 43.
- any activity for a single residence impacting more than 1/4th acre under NWP 29.
- any activity on that reach of the Iowa River located on or within the boundaries of property associated with the Sac and Fox Tribe of Mississippi in Iowa. Contact the tribe for boundary details.

Water quality certification is issued, except as stated above, with the following conditions:

- 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.
- 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.
- If three years elapse between the date of the issuance of a NWP and the discharge for which the federal permit is sought, this certification will cease to be valid, and the applicant must reapply with an updated application.
- If any information contained in the project description is voided by the Corps, or if any new information becomes available, this certification will cease to be valid, and the applicant must reapply with an updated application.

- 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.
- All practicable measures and precautions shall be taken to prevent pollution due to turbidity, pH, temperature, nutrients, suspended solids, floating debris, visible oil and grease, or solvents entering waters of the U.S., including wetlands, during construction and upon completion of the project. All equipment operated within any stream channel, pond, wetland or other water body shall 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, bermed 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, contact shall be made immediately (within 24 hours) to the National Response Center at (800) 424-8802.
- Erosion control measures shall be used during construction to prevent erosion of soil surfaces. Measures to be used include, but are not restricted to: temporary sediment dams or berms, anchored hay bales, filter fabric, mulch, mesh burlap blankets, or permeable dissipaters, such as filter weave silt fence. All erosion control measures shall be placed on the landscape so as to maximize the control of the erosion/sediment runoff from the disturbed site and shall be maintained in place until construction is completed, and a ground cover is established.
- Clearing of vegetation should be minimized and limited to that necessary to accomplish the project. All disturbed areas should be protected to prevent erosion. Revegetation should include native species. Wherever practicable, trees, and shrubs on streambanks or upland areas should be replaced (e.g. tree for tree). If the project is not completed during the appropriate growing season so vegetation can be established, other erosion control measures should be implemented.
- The following materials are not suitable for fill activities into waters of the U.S.: cars, buses, or rail cars, construction or demolition debris, garbage, loose or improperly placed tires, treated lumber (chromated copper arsenate (CCA), creosote, and pentachlorophenol), liquid or raw concrete not poured into forms, grouted riprap, bagged cement, and sewage or organic waste.
- The following conditions pertain to mitigation:
 - Stream mitigation should mimic natural stream sinuosity, stream substrate, and stream dimensions (cross-section and slope) upstream and/or downstream of the mitigation area.

- Vegetated buffer strips shall not be acceptable as mitigation for wetlands impacts, except when using credits from an established and certified wetland mitigation bank where such buffers are incorporated into the bank's original calculated credits.
- Vegetated buffers must be established around mitigation wetlands. The vegetated buffers shall consist of native species, and will normally be between 25 to 50 feet wide, or wider, to address documented water quality or habitat concerns.
- Mitigation may be accomplished by restoring or creating equivalent wetland either on-site or at a suitable off-site location, at a minimum ration of 1.5 acres restored or created wetland for every 1.0 acre of affected area. If the impacts are mitigated by using credits from an established and certified wetland mitigation bank, 1.0 acre of wetland credit will be required for every 1.0 acre of affected area.
- No individual action shall be allowed if it jeopardizes the continued existence, or results in a take of, State-listed threatened or endangered species described on the Iowa Department of Natural Resources website at <http://www.iowadnr.com/other/threatened.html>.
- Where practicable, measures should be taken to prevent the spread of invasive species. *Phalaris arundinacea* (Reed Canary Grass), *Lythrum salicaria* (Purple Loosestrife), *Bromus inermis* (Smooth Brome), *Phragmites, sp.* (Common Reed, River Reed) and *Tamarix, sp.* (Salt Cedar), are NOT appropriate choices of vegetation as plantings for erosion control measures and/or mitigation. National invasive species are listed on the USDA's website (<http://www.invasivespeciesinfo.gov/plants/main.shtml>).

Special Conditions for Certain Nationwide Permits

NWP 3 – Maintenance

In the case of maintenance of structures (3(b)) the activity is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 100 feet in any direction from structure.

NWP 7 - Outfall Structures

Controls shall be 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.

NWP 13 - Bank Stabilization

- Broken concrete used as bank stabilization must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Applicants must break all large slabs to conform to the well graded requirement. Generally, the maximum weight of any piece should not be more than 500 pounds.

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- Gravel and dirt should not exceed 15% of the total fill volume.
- All reinforcement rods, trash, asphalt, and other extraneous materials must be removed from the broken concrete prior to placement in waters of the United States.
- Encroachment of riprap into the channel will be kept to a minimum.
- The top elevation of the riprap shall not exceed the top elevation of the bank.

NWPs 3, 14, 23, 29, and 39 - Culverts

Any culvert must not impede the passage of fish or other aquatic organisms. When a project involves a culvert, it must be designed to: match existing stream bottom elevation and slope, have a vent area ratio of no less than 30 percent at bank condition, and be the shortest length necessary to meet project purposes (i.e., perpendicular crossing vs. obtuse crossing). To the maximum extent practicable, the structure should be bottomless and contain a substrate that matches the existing stream. If a floor is needed, it must be placed at the lowest scour potential of the stream. Where multiple culverts are used for a single road crossing, the center culvert must set slightly lower than that the other culverts to concentrate low flows.

If the Corps determines that compliance with the CWA is not maintained, the permittee and EPA will be notified, and EPA may withdraw this certification.

Once the Corps has made a decision on our final recommendation for water quality certification, please email us of your decision. Also please post our water quality certification on your website for easier access by applicants. If you have any questions, please contact Jennifer Ousley of my staff at (913) 551-7498.

Sincerely,



Margaret Stockdale

Chief

Watershed Planning and Implementation Branch