



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAR 03 2017

Ref: 8WP-AAP

Robert H. Cole
Acting Montana Program Manager
Corps of Engineers, Omaha District
Helena Regulatory office
10 West 15th Street, Suite 2200
Helena, Montana 59626

Dear Mr. Cole:

The Environmental Protection Agency Region 8 (EPA) has responsibility under § 401 of the Clean Water Act to evaluate and certify water quality protections for federal permits or licenses issued for work on most tribal lands within Region 8. We have reviewed the U.S. Army Corps of Engineers' (Corps) January 6, 2017 Federal Register Notice announcing the reissuance of the Corps' Nationwide Permits (NWP) along with the proposed Montana Regional Conditions submitted to the EPA on January 19, 2017, and are transmitting our programmatic CWA § 401 water quality certification (certification) for these NWPs. The enclosed conditions become binding requirements of any NWP issued for work on tribal lands within Montana for Tribes without Treatment in a Manner Similar to States (TAS) for water quality standards and CWA Section 401 programs. We request that the Corps provide this certification letter to applicants for NWPs within Montana as well as post this certification letter on the appropriate Corps website to assure that applicants are aware of the conditions for certification.

In summary, we are certifying 11 of the 52 NWPs with general conditions, including a preconstruction notification requirement. We are denying certification for 41 of the 52 NWPs, all NWPs granted waivers on limits, all "After-the-Fact" NWPs, and all provisional NWPs. We believe this action will help protect water quality and help ensure that the NWP program will have no more than minimal adverse impacts on the aquatic environment on tribal lands.

Projects that qualify for the use of a NWP for which certification has been granted must notify the appropriate Tribal Environmental Program and the EPA in accordance with general condition five of this certification, but may proceed without further written verification from the EPA. Projects that qualify for the use of a NWP for which certification has been denied must request an individual project certification from the EPA.

We are certifying under the information presented in the January 6, 2017 Federal Register. We also are

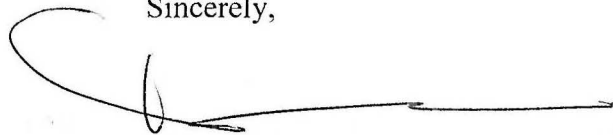
adopting the Corps' Montana Regional Conditions, as submitted to the EPA on January 19, 2017, as § 401 conditions for all NWP's issued for Tribal waters. If the Corps eliminates or makes substantial changes to any of the published NWP's or conditions, we reserve the right to amend our certification to address any and all changes.

Please send all correspondence to:

United States Environmental Protection Agency, Region 8
Montana Office – 401 Certification Program
10 W. 15th Street, Suite 3200
Helena, MT 59626

Thank you for your ongoing partnership in the implementation of the regulatory programs of the CWA. If you have questions about this certification, the most knowledgeable person on Region 8 staff is Peter Brumm who may be reached at 406-457-5029, or email at brumm.peter@epa.gov.

Sincerely,



Darcy O'Connor
Assistant Regional Administrator
Office of Water Protection

Enclosure

CWA Section 401 Water Quality Certification for 2017 Nationwide Permits

Cc: Harlan Baker, Chairman
Chippewa-Cree Tribe

Alvin Not Afraid, Jr., Chairman
Crow Tribe

Mark Azure, President
Gros Ventre and Assiniboine Tribes

ENCLOSURE
CWA Section 401 Water Quality Certification for 2017 Nationwide Permits

General Conditions

- 1) A copy of the certification documentation must be on-site.
- 2) This programmatic certification does not authorize construction of on-site septic systems in waters of the U.S.
- 3) Certification is denied for all activities affecting fens, springs, hanging gardens and difficult to replace wetlands as described in 33 CFR332 (e)(3).
- 4) All equipment must be inspected for fluid leaks and invasive species prior to use on a project. All fluid leaks shall be repaired and cleaned prior to use or when discovered, or if the fluid leak can't be repaired, the equipment shall not be used on site. Equipment used in waters with the possibility of aquatic nuisance species infestation must be thoroughly cleaned before they are used on the project.
- 5) For NWP's for which certification has been granted, the Applicant must notify the EPA and the Tribal Environmental Program of the use of all NWP's prior to the commencement of the project. This notification will include a short summary of the proposed activity, complete contact information of the applicant and contractor, and a summary of contact/discussions with the affected Tribe's water quality staff regarding the project.
- 6) For NWP's for which certification has been denied, the Applicant must provide to the EPA and the Tribal Environmental Program a certification application which includes the following:
 - i) The information required in Corps of Engineers Nationwide Permits General Condition 31(b), "Contents of Pre-Construction Notification."
 - ii) A summary of contacts/discussions with the affected Tribe's water quality staff regarding the project.
 - iii) A summary of tribally identified aquatic resource concerns, if any.
 - iv) A description of best management practices (BMPs) and how the project will utilize construction BMPs to reduce or eliminate water quality degradation as a result of the project.
 - v) A discussion of how the project has been designed to be resilient to the effects of climate change. Provide in the discussion a projection of future climate in the project area including a reference to how the projection was made.
- 7) All Corps of Engineers Regional Conditions.

8) Any additional information submitted to the Corps, such as cultural resource reports or summaries, biological assessment for endangered species, etc., must be included in the certification application.

Deny

After-the-Fact Nationwide Permits
Provisional Nationwide Permits
Nationwide Permits granted waivers on limits by the District or Division Engineer

- 1 Aids to Navigation
- 2 Structures in Artificial Canals
- 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 6 Survey Activities which include trenching
- 7 Outfall Structures and Associated Intake Structures
- 8 Oil and Gas Structures on the Outer Continental Shelf
- 9 Structures in Fleeting and Anchorage Areas.
- 10 Mooring Buoys
- 12 Utility Line Activities
- 13 Bank Stabilization
- 14 Linear Transportation Projects
- 15 U.S. Coast Guard Approved Bridges
- 16 Return Water from Upland Contained Disposal Areas
- 17 Hydropower Projects
- 18 Minor Discharges
- 20 Response Operations for Oil and Hazardous Substances
- 21 Surface Coal Mining Activities
- 22 Removal of Vessels
- 24 Indian Tribe or State Administered Section 404 Programs
- 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 29 Residential Developments
- 31 Maintenance of Existing Flood Control Facilities
- 33 Temporary Construction, Access, and Dewatering
- 34 Cranberry Production Activities
- 36 Boat Ramps
- 37 Emergency Watershed Protection and Rehabilitation
- 38 Cleanup of Hazardous and Toxic Waste
- 39 Commercial and Institutional Developments
- 40 Agricultural Activities
- 41 Reshaping Existing Drainage Ditches
- 42 Recreational Facilities
- 43 Stormwater Management Facilities
- 44 Mining Activities
- 45 Repair of Uplands Damaged by Discrete Events
- 46 Discharges in Ditches

- 48 Commercial Shellfish Aquaculture Activities
- 49 Coal Remining Activities
- 50 Underground Coal Mining Activities
- 51 Land-Based Renewal Energy Generation Activities
- 52 Water-Based Renewable Energy Generation Projects
- 53 Removal of Low-Head Dams
- 54 Living Shorelines

Certify with General Conditions

- 3 Maintenance
- 5 Scientific Measurement Devices
- 6 Survey Activities which do not include trenching
- 11 Temporary Recreational Structures
- 19 Minor Dredging
- 23 Approved Categorical Exclusions
- 25 Structural Discharges
- 28 Modifications of Existing Marinas
- 30 Moist Soil Management for Wildlife
- 32 Completed Enforcement Actions for projects
- 35 Maintenance Dredging of Existing Basins

All NWP's with Recommendations

- 1 Aids to Navigation – Deny
- 2 Structures in Artificial Canals – Deny
- 3 Maintenance – Certify with General Conditions
- 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities – Deny
- 5 Scientific Measurement Devices – Certify with General Conditions
- 6 Survey Activities – Certify with General Conditions except Deny when there is a trenching activity
- 7 Outfall Structures and Associated Intake Structures – Deny
- 8 Oil and Gas Structures on the Outer Continental Shelf – Deny
- 9 Structures in Fleeting and Anchorage Areas – Deny
- 10 Mooring Buoys – Deny
- 11 Temporary Recreational Structures – Certify with General Conditions
- 12 Utility Line Activities – Deny
- 13 Bank Stabilization – Deny
- 14 Linear Transportation Projects – Deny
- 15 US Coast Guard Approved Bridges – Deny
- 16 Return Water from Upland Contained Disposal Areas – Deny
- 17 Hydropower Projects – Deny
- 18 Minor Discharges – Deny
- 19 Minor Dredging – Certify with General Conditions
- 20 Response Operations for Oil and Hazardous Substances – Deny
- 21 Surface Coal Mining – Deny
- 22 Removal of Vessels – Deny

- 23 Approved Categorical Exclusions – Certify with General Conditions
- 24 Indian Tribe or State Administered 404 Programs – Deny
- 25 Structural Discharges – Certify with General Conditions
- 26 – Reserved
- 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Deny
- 28 Modifications of Existing Marinas – Certify with General Conditions
- 29 Residential Developments – Deny
- 30 Moist Soil Management for Wildlife – Certify with General Conditions
- 31 Maintenance of Existing Flood Control Activities – Deny
- 32 Completed Enforcement Activities – Certify with General Conditions
- 33 Temporary Construction, Access, and Dewatering – Deny
- 34 Cranberry Production Activities – Deny
- 35 Maintenance Dredging of Existing Basins – Certify with General Conditions
- 36 Boat Ramps – Deny
- 37 Emergency Watershed Protection and Rehabilitation – Deny
- 38 Cleanup of Hazardous and Toxic Waste – Deny
- 39 Commercial and Institutional Developments – Deny
- 40 Agricultural Activities – Deny
- 41 Reshaping Existing Drainage Ditches – Deny
- 42 Recreational Facilities – Deny
- 43 Stormwater Management Facilities – Deny
- 44 Mining Activities – Deny
- 45 Repair of Uplands Damaged by Discrete Events – Deny
- 46 Discharges in Ditches – Deny
- 47 – Reserved
- 48 Existing Commercial Shellfish Aquaculture Activities – Deny
- 49 Coal Remaining Activities – Deny
- 50 Underground Coal Mining Activities – Deny
- 51 Land-Based Renewal Energy Generation Activities – Deny
- 52 Water-Based Renewable Energy Generation Projects – Deny
- 53 Removal of Low-Head Dams – Deny
- 54 Living Shorelines – Deny

