

Nationwide Permit (NWP) Section 401 Water Quality Certification In Indian Country within the State of Kansas

1. **Denied Activities/Waterbodies:** Section 401 Water Quality Certification is denied for the following activities and /or waterbodies. Parties wishing to undertake work under any Section 404 NWP, where certification has been denied, must obtain an individual Section 401 Certification from the U.S. Environmental Protection Agency (EPA) prior to initiation of work in waters of the U.S.

U.S. Environmental Protection Agency
Region 7
Water Resources Protection Branch
901 North 5th Street
<http://www.epa.gov/region7/water/index.htm>
Kansas City, Kansas 66101

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- a. **Dams:** The use of dams to impound perennial and intermittent waters of the U.S.
- b. **Channelization activities:** Any activity that moves, straightens, shortens, cuts off, diverts, or fills to eliminate a stream channel, whether natural or previously altered. This includes modifications to channel cross section, such as widening or narrowing, if the activity is intended to alter the course or capacity of the channel, except for modifications through the opening of authorized bridges. This also includes lining channels with concrete and placing streams in culverts, except for culverts for road crossings. The "Channelization activities" definition does not include ditch or channel cleanout to original or normal cross section.
- c. **Fens, Sedge Meadows, Seeps and Out-of-stream-springs:** Any activities involving waters of the U.S. that may affect these resource areas, of any size.
- d. **Forested wetlands:** Any discharges of dredged or fill material impacting greater than 1/10 acre of forested wetlands.
- e. **Big Soldier Creek:** Any activity located in that reach of Big Soldier Creek on or within the boundaries of the property owned by the Prairie Band of Potawatomi Tribe in Kansas.
- f. **Impaired waters:** The discharge of dredged or fill material into wetlands adjacent to streams, rivers, or other waters of the U.S., including wetlands, listed under 303(d) of the Clean Water Act (See <http://www.epa.gov/OWOW/tmdl/index.html> for a map and list of impaired waters).
- g. **Riparian forest clearing:** The removal of riparian forest buffers in projects associated with the discharge of dredged or fill material along waters of the U.S. listed under 303(d) of the Clean Water Act (See <http://www.epa.gov/OWOW/tmdl/index.html> for a map and list of impaired waters).
- h. **Unsuitable materials:** Discharges of buses; railroad cars; broken concrete with excess fines, with contamination or with exposed rebar; tires of any kind; unprotected sand, gravel, or earth fill in contact with flowing water (e.g., stream bed material shall not be pushed against banks for erosion control or used for stream bank stabilization methods); or raw concrete (either in bags or in contact with water).
- i. **NWP No. 3:** Any activity pertaining to repairing, rehabilitating or replacing low water crossings where discharges of fill or dredged material would raise or lower the elevation of the crossing by a cumulative total of 12-inches or more, or if removing the structure.

- j. NWP No. 7: Activities which drain (e.g., via tile systems) or that involve any water withdrawal from waters of the U.S.
 - k. NWP No. 12: Construction of substations and/or activities that involve any water withdrawal from waters of the U.S.
 - l. NWP No. 27: Construction of levees and berms over 4 feet in height and/or projects that involve the relocation of forested wetlands.
 - m. NWP No. 37: Denied for all activities.
 - n. NWP No. 39: Impacts to any waters of the U.S. exceeding 300 linear feet.
 - o. NWP No. 40: Impacts to any waters of the U.S. exceeding 300 linear feet.
 - p. NWP No. 42: Impacts to any waters of the U.S. exceeding 300 linear feet, and/or the construction of facilities including nature centers, pit privies, sewage lagoons, and stables.
 - q. NWP No. 43: Impacts to any waters of the U.S. exceeding 300 linear feet, and/or the construction of new storm water management facilities in intermittent or ephemeral streams.
 - r. NWP No. 44: Denied for all activities.
2. **Certified NWP Activities**: All NWP activities not described above are certified subject to compliance with the following provisions and conditions. Questions concerning interpretation of these provisions and conditions should be directed to EPA.
- a. Where practicable, wetland losses authorized under any nationwide permit requiring mitigation will be completed prior to or concurrent with project impacts.
 - b. Discharges of dredged or fill material for fills that span the width of a stream (such as weirs and grade control structures) will be designed to allow for the passage of aquatic life (e.g. gentle slopes on structure faces rather than vertical surfaces and not greater than approximately 18 inches in height).
 - c. 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.
 - d. Any fuel spill associated with any activity authorized under the Clean Water Act, Section 404 nationwide permits shall be expeditiously responded to by the applicant or by local emergency personnel. The permittee shall immediately contact the National Response Center at 800-424-8802.
 - e. NWP No. 7: 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.
 - f. NWP No. 12: Forested wetlands or riparian wooded areas that are cleared to construct the utility line must be allowed to revegetate naturally to native tree species except for a minimal corridor that is essential to inspection of the line.
 - g. NWP No. 14: Limit clearing of riparian stream corridors to the minimum necessary for project construction. Clearing limits must be specified in the construction contract.