

**U.S. Environmental Protection Agency 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 in the State of Kansas**

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: Iowa Tribe of Kansas and Nebraska, Kickapoo Tribe of Kansas, Prairie Band Potawatomi Nation, and Sac and Fox Nation of Missouri in Kansas and Nebraska

BACKGROUND:

Section 401 of the Clean Water Act requires that an applicant for a 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 Nationwide Permits require a certification prior to issuance; therefore, this certification is a condition of these federal permits. Every five years, the U.S. Army Corps of Engineers reissues its CWA Section 404 NWP's, and certification determinations must be made for each of these NWP's.

Presently, the tribes in Region 7 do not have the EPA-approved water quality standards or Section 401 certification programs for the purpose of issuing 401 certifications. In the absence of such certification programs, the EPA makes the certification determination, including those for NWP's.

This certification provides notice concerning which NWP's and activities have been approved or denied by the EPA for water quality certification. If a NWP (or activity authorized under a NWP) is denied, then the applicant must apply for an individual certification by contacting the EPA. Please note that individual certification may result in additional conditions and/or mitigation requirements. If a NWP is approved for water quality certification, then the applicant must comply with the conditions described below under "Approved."

DETERMINATION:

Denied:

The following NWP's (or activity authorized under a NWP) are denied water quality certification and, therefore, applicants must apply for an individual 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 NWP's: 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 NWP's are encouraged to further reduce and minimize impacts within the proposed activities/projects areas to protect the environment.

- Any proposed activity/project that will discharge to a waterbody within ½ mile upstream of an impaired waterbody (state 303(d) listed waters). The state 303(d) list can be found at: <http://www.epa.gov/waters/>. Click “myWATERS mapper.” Map your location and view impairments.

Approved:

All NWP's (or activity authorized under a NWP) not listed as denied water quality certification above are approved *provided* they comply with the general conditions described below.

GENERAL 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.
- Copies of this certification shall be kept on the job site and readily available for reference by tribal members, Corps personnel, the 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.
- 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 NWP's 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 the 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. Refer to Kansas Certified Weed Free Forage and Mulch Program at http://www.ksda.gov/plant_protection/content/353

If you have questions regarding this certification for approved Nationwide Permits or if you need to request an individual certification, contact the 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:

Date 8/13/12


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