UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
http://www.epa.gov/region08

APR 18 2012

Ref: 8EPR-EP

Colonel Jason D. Williams
U.S. Army Corps of Engineers, Albuquerque District
Attention: CESPA-OD-R
4101 Jefferson Plaza NE
Albuquerque, NM 87109-3435

Re: Review of the U. S. Army Corps of Engineers (Corps) February 21, 2012 Federal Register Notice announcing the reissuance of the Corps' CWA §404 Nationwide Permits (NWPs)

Dear Colonel Williams:

The Environmental Protection Agency (EPA) Region 8 has the responsibility under §401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits or licenses issued for work on most tribal lands within Region 8. The EPA has reviewed the U. S. Army Corps of Engineers (Corps) February 21, 2012 Federal Register Notice announcing the reissuance of the Corps' CWA §404 Nationwide Permits (NWPs), and is transmitting our programmatic water quality certification (certification) for these NWPs. The enclosed conditions become binding requirements of any NWP issued for work on tribal lands within Region 8 for tribes without Treatment in a Manner Similar to States for water quality standards programs. The EPA requests that the Corps provide this certification letter to applicants for NWPs within Region 8 as well as post this certification letter on the appropriate Corps web sites to assure that applicants are aware of the conditions for certification.

In summary the EPA is waiving certification for 22 of the 50 NWPs, certifying or conditionally certifying 14 NWPs with general conditions, and denying certification for 14 NWPs. The EPA believes these conditions 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. In general, the EPA is denying certification for any activities described in the Federal Register notice which require either a Preconstruction Notification (PCN) or a waiver from the District Engineer. The EPA believes these activities which require additional review by the Corps merit additional scrutiny from the EPA.

Projects which qualify for the use of a NWP for which certification has been denied must contact the EPA for individual project certification. Projects which do not require individual certification must notify the EPA in accordance with the general conditions of this certification, but may proceed without further written verification from the EPA. For projects for which a certification has been denied and project specific certification is required, the certification may be considered waived if the EPA fails to contact the applicant within 30 days of the EPA's receipt of the request for certification.

Please send all correspondence to:

United States Environmental Protection Agency, Region 8
Attn: Wetlands and Tribal Unit, EPR-EP 401 Certification
1595 Wynkoop St.
Denver, Colorado 80202-1129

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 my staff is Brent Truskowski and he may be reached at 303-312-6235, or email at truskowski.brent@epa.gov.

Sincerely,

for BC

Humberto L. Garcia Jr., Director
Ecosystems Protection Program

cc: Van Truan, Corps of Engineers, Pueblo, CO

General Conditions

For all NWPs:

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 US.
3. Certification is denied for all activities affecting fens and springs.
4. All equipment must be inspected for fluid leaks 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.
5. Notification of the use of all NWPs shall be sent to EPA prior to the commencement of the project. This notification will include the information required in GC 31(b), and a summary of contacts with the affected tribe's water quality staff regarding the project.

For NWPs for which certification has been denied, the Applicant must provide:

1. The information required in GC 31(b).
2. A summary of contacts with the affected tribe's water quality staff regarding the project.
3. A summary of tribally identified water quality concerns, if any.
4. If the affected water body is continuous off the tribal lands, a summary of state identified water quality standards for the affected water body.
5. A description of how the project will utilize construction best management practices to reduce or eliminate water quality degradation as a result of the project.

If the EPA does not respond to a request for certification within 30 days, the cert is considered waived.

Waive

1 Aids to Navigation
2 Structures in Artificial Canals
4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5 Scientific Measurement Devices
8 Oil and Gas Structures on the Outer Continental Shelf
9 Structures in Fleeting and Anchorage Areas.
10 Mooring Buoys
11 Temporary Recreational Structures
15 U.S. Coast Guard Approved Bridges
20 Response Operations for Oil and Hazardous Substances
22 Removal of Vessels
23 Approved Categorical Exclusions
24 Indian Tribe or State Administered Section 404 Programs
28 Modifications of Existing Marinas
30 Moist Soil Management for Wildlife
31 Maintenance of Existing Flood Control Facilities
32 Completed Enforcement Actions
34 Cranberry Production Activities

35 Maintenance Dredging of Existing Basins
37 Emergency Watershed Protection and Rehabilitation
38 Cleanup of Hazardous and Toxic Waste
48 Commercial Shellfish Aquaculture Activities

Deny Certification
7 Outfall Structures and Associated Intake Structures
16 Return Water from Upland Contained Disposal Areas
17 Hydropower Projects
21 Surface Coal Mining Activities
29 Residential Developments
33 Temporary Construction, Access, and Dewatering
39 Commercial and Institutional Developments
40 Agricultural Activities
44 Mining Activities
45 Repair of Uplands Damaged by Discrete Events
49 Coal Remining Activities
50 Underground Coal Mining Activities
51 Land-Based Renewal Energy Generation Activities
52 Water-Based Renewable Energy Generation Projects

Certify With Conditions/Certify
3 Maintenance – Certify except for activities which require a PCN.
6 Survey Activities – Certify for all activities except for trenching. Certification is denied for trenching activities.
12 Utility Line Activities – Certify except for activities which require a PCN.
13 Bank Stabilization – Certify except for activities which require a PCN.
14 Linear Transportation Projects – Certify except for activities which require a PCN.
18 Minor Discharges – Certify except for activities which require a PCN
19 Minor Dredging – Certify
25 Structural Discharges – Certify
27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Certify except for activities which require a PCN.
36 Boat Ramps – Certify except for activities which require a PCN
41 Reshaping Existing Drainage Ditches – Certify except for activities which require a PCN.
42 Recreational Facilities – Certify except for activities which require a waiver from the District Engineer.
43 Stormwater Management Facilities – Certify except for activities which require a PCN or waiver from the District Engineer.
46 Discharges in Ditches – Certify

All NWPs with Recommendations
1 Aids to Navigation – Waive
2 Structures in Artificial Canals – Waive
3 Maintenance – Certify except for activities which require a PCN.

4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities – Waive
5 Scientific Measurement Devices – Waive
6 Survey Activities – Certify except for trenching activities.
7 Outfall Structures and Associated Intake Structures – Deny
8 Oil and Gas Structures on the Outer Continental Shelf – Waive
9 Structures in Fleeting and Anchorage Areas – Waive
10 Mooring Buoys – Waive
11 Temporary Recreational Structures – Waive
12 Utility Line Activities – Certify except for activities which require a PCN.
13 Bank Stabilization – Certify except for activities which require a PCN.
14 Linear Transportation Projects – Certify except for activities which require a PCN.
15 US Coast Guard Approved Bridges – Waive
16 Return Water From Upland Contained Disposal Areas – Deny
17 Hydropower Projects – Deny
18 Minor Discharges – Certify except for activities which require a PCN
19 Minor Dredging – Certify
20 Response Operations for Oil and Hazardous Substances – Waive
21 Surface Coal Mining – Deny
22 Removal of Vessels – Waive
23 Approved Categorical Exclusions – Waive
24 Indian Tribe or State Administered 404 Programs – Waive
25 Structural Discharges – Certify
26 Reserved
27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Deny cert for activities which require a PCN.
28 Modifications of Existing Marinas – Waive
29 Residential Developments – Deny
30 Moist Soil Management for Wildlife – Waive
31 Maintenance of Existing Flood Control Activities – Waive
32 Completed Enforcement Activities – Waive
33 Temporary Construction, Access, and Dewatering – Deny
34 Cranberry Production Activities – Waive
35 Maintenance Dredging of Existing Basins – Waive
36 Boat Ramps – Certify except for activities which require a PCN
37 Emergency Watershed Protection and Rehabilitation – Waive
38 Cleanup of Hazardous and Toxic Waste – Waive
39 Commercial and Institutional Developments – Deny
40 Agricultural Activities – Deny
41 Reshaping Existing Drainage Ditches – Certify except for activities which require a PCN.
42 Recreational Facilities – Certify except for activities which require a waiver from the District Engineer.
43 Stormwater Management Facilities – Certify except for activities which require a PCN or waiver from the District Engineer.
44 Mining Activities – Deny
45 Repair of Uplands Damaged by Discrete Events – Deny

46 Discharges in Ditches – Certify
47 Reserved
48 Existing Commercial Shellfish Aquaculture Activities – Waive
49 Coal Remining Activities – Deny
50 Underground Coal Mining Activities – Deny
51 Land-Based Renewal Energy Generation Activities – Deny
52 Water-Based Renewable Energy Generation Projects - Deny

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