



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200  
DALLAS, TEXAS 75202 - 2733

MAR - 2 2017

**RECEIVED**

**Regulatory Division**

**Corps of Engineers**

**Date** 3/6/17 CA

Mr. Allan Steinle  
Chief, Regulatory Division  
Albuquerque District, Corps of Engineers  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109-3435

RE: Certification of 2017 Nationwide Permits for use in Indian country in EPA Region 6

Dear Mr. Steinle:

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2017 nationwide permits (NWP) in Indian country where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program.

In an effort to ensure that the potentially affected tribes are fully aware of the nationwide permit program and the new 2017 NWP, EPA Region 6 contacted each tribe and requested their positive concurrence on our potential certification of the NWP. Alternatively, if a tribe did not respond, we informed them that would be interpreted as a desire to pursue individual review of these NWP activities to ensure water quality standards compliance. We received a request to certify from the Ysleta del Sur Pueblo, El Paso, Texas. Therefore, with the addition of the enclosure titled "401 Certification Conditions for the 2017 Nationwide Permits for Tribal Lands in Louisiana, New Mexico, Oklahoma, and Texas" we hereby certify the use of the 2017 NWP for use on the Ysleta del Sur Pueblo. For the remaining affected tribes within Albuquerque District we do not certify the use of the 2017 NWP, rather, in accordance with Corps regulations at 33 CFR 330.4(c), anyone wanting to perform an activity subject to the NWP on tribal land is required to obtain an activity specific water quality certification or waiver from EPA before proceeding under the NWP.

We do not want this approach to cause significant delays in the day to day CWA Section 404 permit program that you administer. Our goal will be, once we are aware of the need for 401 certification, to complete this process in 10 days or less. We will also continuously evaluate this approach, and invite your agency to do the same, and should it create undo complications or workload burdens, we will reevaluate the process and take steps to improve it. This process has already increased the level of awareness of the 404 program by several of New Mexico Pueblos, and we hope to continue this trend by working with tribes more closely over time on CWA Section 404 program matters.

If wish to discuss this approach or become aware of the need for 401 certification of a potential NWP action, please contact Tom Nystrom of my staff at (214) 665-8331.

Sincerely,

William K. Honker, P.E.  
Director  
Water Division

Enclosure

401 Certification Conditions for the 2017 Nationwide Permits for  
Tribal Lands in Louisiana, New Mexico, Oklahoma, and Texas

1. The permittee shall conduct all work in such a manner as to comply with all U.S. Army Corps of Engineers §404 permit conditions.
2. The permittee shall keep a copy of this certification with conditions at the project site during all phases of construction. All contractors or subcontractors involved in the project must be provided a copy of this certification prior to commencement of activities.
3. All heavy equipment used in the project areas shall be steam cleaned before the start of the project and inspected daily for leaks. Leaking equipment must not be used in or near surface water or in a wetland area equipment shall be parked outside the waterbody when not in use.
4. All fuels, oil, hydraulic fluid, or other substances of this nature must not be stored, temporarily or otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the primary containment system leaks. Refueling of servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.
5. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.
6. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment. Temporary access roads must be restored to pre-project conditions.
7. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to the stream channels. All concrete that is to be poured must be fully contained in mortar-tight forms to prevent accidental releases to surface water or ground water. No discharge of any concrete to surface water or ground water may occur. Dumping of waste materials near watercourses is strictly prohibited.
8. Work in a stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.
9. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.
10. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation to establish permanent cover.
11. Prior to commencement of each project, the permittee shall contact the Tribe to obtain a list of emergency response personnel. The permittee shall provide this list to all staff, contractors and subcontractors.
12. Immediate initiation of consultation with the tribe is required should any human remain or artifacts be unearthed during the project that fall under the Native American Graves Protection and Repatriation Act guidelines.