



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

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

Ref: 8EPR-EP

Colonel Robert Ruch  
U.S. Army Corps of Engineers, Omaha District  
Attention: CENWO-OP-N  
P.O. Box 5  
Omaha, NE 68101-0005

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 (NWP)

Dear Colonel Ruch:

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 (NWP), and is transmitting our programmatic water quality certification (certification) for these NWP. 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 NWP 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 NWP, certifying or conditionally certifying 14 NWP with general conditions, and denying certification for 14 NWP. 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.

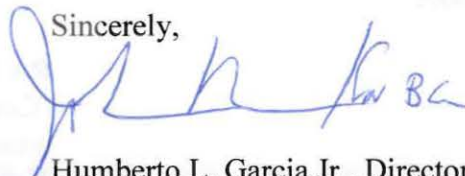
Projects which qualify for the use of a NWP for which certification has been denied must contact the EPA for individual project certification. Projects which do not require individual certification must notify the EPA in accordance with the general conditions of this certification, but may proceed without 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](mailto:truskowski.brent@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Humberto L. Garcia Jr.", with a stylized flourish at the end.

Humberto L. Garcia Jr., Director  
Ecosystems Protection Program

cc: Cheryl Goldsberry, Corps of Engineers Omaha, NE

## **General Conditions**

For all NWP's:

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 NWP's 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 NWP's 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 NWP's 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

