



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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OFFICE OF
ENVIRONMENTAL REVIEW
AND ASSESSMENT

AUG 16 2017

Colonel Aaron Dorf
District Engineer
U.S. Army Corps of Engineers
Portland District
P.O. Box 2946
Portland, Oregon 97208-2946

Dear Colonel Dorf:

The U.S. Environmental Protection Agency has completed its review of the U.S. Army Corps of Engineers' Nationwide Permit Federal Rule, as published in the *Federal Register* (82 FR 1860) on January 6, 2017. On March 6, 2017, the EPA submitted the Clean Water Act Section 401 water quality certification decisions to the Portland District.

On March 17, 2017, the U.S. Army Corps of Engineers Northwest Division notified the EPA that they considered certain aspects of the CWA Section 401 water quality certification as problematic and was effectively an "administrative denial." On March 28, 2017, we had a conference call with NW Division and Seattle District representatives to discuss the specific concerns and reached agreement on the proposed modifications to the language. The process agreed to was for the EPA to make revisions to the Seattle District's Certification, to receive NW Division concurrence on those changes, and then make the same changes where applicable to the Portland and Walla Walla Districts' Certifications. The EPA provided the draft revised changes to the NW Division and Seattle District Corps on April 10, 2017. After several additional exchanges of information, we received final feedback from the Corps on July 5, 2017. This letter and the revised enclosure reflects the EPA's adoption of the final language changes requested by the Corps.

Pursuant to Section 401 of the CWA, the EPA certifies that there is reasonable assurance that the Department of the Army's modifications and additions to the Nationwide Permits at Appendix A to 33 CFR Part 330 will comply with applicable provisions of the CWA Sections 301, 302, 303, 306, and 307 in those areas where the EPA is the certifying authority within the State of Oregon. The EPA is responsible for providing CWA Section 401 water quality certification in Indian Country for Tribes who do not have treatment as a state and on lands with exclusive federal jurisdiction. In the State of Oregon, the EPA has CWA Section 401 water quality certification authority for seven Tribes as listed on the copy line below.

This letter and enclosure constitute the final CWA Section 401 water quality certification for the reissuance of the 50 Nationwide Permits, their general conditions and definitions, and the two new Nationwide Permits 53 and 54. The EPA's decisions are based on the 2017 Nationwide Permits and National General Conditions, as published in the Federal Register on January 6, 2017, and the Portland District's final Regional General Conditions and Permit-specific Regional Conditions as published in the special public notice dated March 17, 2017. This certification applies to permit authorizations by the Corps, including the CWA Section 404 and Rivers and Harbors Act Section 10 activities, that may result in a discharge of pollutants to waters of the U.S. where the EPA is the certifying authority.

The EPA denies CWA Section 401 water quality certification for the following Nationwide Permits:

NWP 16 – Return Water from Upland Contained Disposal Areas
NWP 17 – Hydropower Projects
NWP 21 – Surface Coal Mining Activities
NWP 29 – Residential Developments
NWP 34 – Cranberry Production Activities
NWP 39 – Commercial and Institutional Developments
NWP 40 – Agricultural Activities
NWP 42 – Recreational Facilities
NWP 43 – Stormwater Management Facilities
NWP 44 – Mining Activities
NWP 46 – Discharges to Ditches and Canals
NWP 48 – Commercial Shellfish Aquaculture Activities
NWP 49 – Coal Remining Activities
NWP 50 – Underground Coal Mining Activities
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
NWP 53 – Removal of Low-Head Dams

The EPA partially denies CWA Section 401 water quality certification for the following Nationwide Permits. An individual CWA Section 401 certification is required for any project that is denied certification, as described below, and as provided in the enclosed Appendix 1, EPA General Conditions and Nationwide Permit-Specific Regional Water Quality Conditions.

NWP 3 – Maintenance: Maintenance or replacement activities in fish bearing waters of the U.S. that extend beyond their prior footprint, or activities that require excavation or dredging in open water, are denied certification.

NWP 6 – Survey Activities: Projects involving oil or natural gas exploration or requires trenching in waters of the U.S., are denied certification.

NWP 7 – Outfall Structures and Associated Intake Structures: Projects having an associated outfall to a special aquatic site (e.g., mud-flat, vegetated shallow, wetland) or where receiving waters cannot be diverted, are denied certification.

NWP 12 – Utility Line Activities: Any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or where there are associated permanent access roads, temporary structures or fills, or projects authorized under one or more nationwide permit(s) that result in greater than 1/10 acre of impacts to aquatic resources, or results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or over 300 linear feet of stream, are denied certification.

NWP 13 – Bank Stabilization: Projects in excess of 300 linear feet, or that do not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions that are the only way to protect an existing transportation related structure), or that propose permanent fill in adjacent wetlands, are denied certification.

NWP 14 – Linear Transportation Projects: Any projects authorized under one or more nationwide permit that result in greater than 1/10 acre of impacts to aquatic resources, or results in a permanent conversion of wetlands (i.e., forested wetlands to emergent wetlands), or over 300 linear feet of stream, are denied certification.

NWP 23 – Approved Categorical Exclusions: Projects having more than 1/10 acre of impacts to aquatic resources or in excess of 300 linear feet of stream are denied certification.

NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities: Projects that will affect greater than 1/2 acre of wetlands, or 300 linear feet of fish bearing streams, or any activity in tidal wetlands or waters, are denied certification.

NWP 41 – Reshaping Existing Drainage Ditches: Projects in excess of 500 linear feet are denied certification.

NWP 45 – Repair of Uplands Damaged by Discrete Events: Projects greater than ½ acre or requiring restoration waterward of the pre-event ordinary high water mark are denied certification.

NWP 51 – Land-Based Renewable Energy Generation Facilities: Projects affecting greater than ½ acre of aquatic resources or 300 linear feet of stream are denied certification.

NWP 54 – Living Shorelines: Projects that are located within a special aquatic site (e.g., mud-flat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish in marine waters, are denied certification.

The EPA certifies that the discharges authorized by the remaining Nationwide Permits comply with the applicable provisions of the CWA, provided that the permittee complies with all general conditions of the Nationwide Permits, the District's final regional conditions dated March 17, 2017 and the EPA water quality certification General Conditions, which must be included as enforceable conditions of the Nationwide Permits:

NWP 1 – Aids to Navigation

NWP 2 – Structures in Artificial Canals

NWP 4 – Fish & Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

NWP 5 – Scientific Measurement Devices

NWP 8 – Oil and Gas Structures on the Outer Continental Shelf

NWP 9 – Structures in Fleeting and Anchorage Areas

NWP 10 – Mooring Buoys

NWP 11 – Temporary Recreational Structures

NWP 15 – U.S. Coast Guard Bridges

NWP 18 – Minor Discharges

NWP 19 – Minor Dredging

NWP 20 – Response Operations for Oil or Hazardous Substances

NWP 22 – Removal of Vessels

NWP 24 – Indian Tribe or State Administered Section 404 Programs

NWP 25 – Structural Discharges

NWP 28 – Modifications of Existing Marinas

NWP 30 – Moist Soil Management for Wildlife

NWP 31 – Maintenance of Existing Flood Control Facilities

NWP 32 – Completed Enforcement Actions

NWP 33 – Temporary Construction, Access and Dewatering

NWP 35 – Maintenance Dredging of Existing Basins

NWP 36 – Boat Ramps

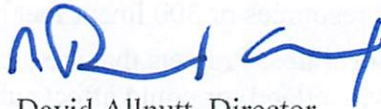
NWP 37 – Emergency Watershed Protection and Rehabilitation

NWP 38 – Cleanup of Hazardous and Toxic Waste

The EPA is notifying the Tribes within the State of Oregon for whom the EPA has authority to issue CWA Section 401 water quality certifications of these final conditions by copy of this letter. We are also providing a courtesy copy to the Tribes with their own CWA Section 401 water quality certification authority.

I appreciate the collaboration and assistance by your staff throughout the water quality certification process for the Nationwide Permits. Please do not hesitate to contact Ms. Linda Storm at 206-553-6384 or storm.linda@epa.gov or Ms. Tracie Nadeau at 503-326-3685 or nadeau.tracie@epa.gov with any questions regarding the EPA's final CWA Section 401 water quality certifications.

Sincerely,



R. David Allnutt, Director
Office of Environmental Review and Assessment

Enclosure

cc (via electronic mail):

Mr. Shawn Zinszer, U.S. Army Corps of Engineers
Mr. Bill Abadie, U.S. Army Corps of Engineers
Ms. Judy Linton, U.S. Army Corps of Engineers
Mr. Marc Liverman, National Marine Fisheries Service
Ms. Sara Christensen, Oregon Department of Environmental Quality
Ms. Elizabeth Ruther, Department of Land Conservation and Development
Ms. Joy Vaughan, Oregon Department of Fish and Wildlife
Mr. Jason Fenton, Burns Paiute Tribe
Ms. Margaret Corvi, Confederated Tribes of the Coos, Lower Umpqua & Siuslaw Indians
Mr. Mark Healy, Coquille Indian Tribe
Mr. Jason Robison, Cow Creek Band of Umpqua Tribe of Indians
Mr. Mike Wilson, Confederated Tribes of the Grand Ronde
Mr. Wil Hatcher, Klamath Tribes
Mr. Mike Kenney, Confederated Tribes of Siletz Indians

Appendix 1

U.S. Environmental Protection Agency's Water Quality Conditions for the 2017 U.S. Army Corps of Engineers Nationwide Permits on Tribal Lands without Treatment as a State and Lands with Exclusive Federal Jurisdiction in Oregon

In addition to all the U.S. Army Corps of Engineers' National and Portland District's Regional permit conditions, the following EPA Section 401 water quality certification General Conditions apply to all Nationwide Permits, whether certified or partially certified with conditions.

EPA GENERAL CONDITIONS:

EPA General Condition 1 – Special Aquatic Sites

Any activities in the following types of waters of the U.S., including wetlands, will require an individual 401 certification: Mature forested wetlands; bogs; peatlands; wetlands in dunal systems along the Oregon coast; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; salt marshes; or marine waters with eelgrass or kelp beds.

EPA General Condition 2 – Soil Erosion and Sediment Controls

A 401 certification determination is based on the project or activity meeting established turbidity levels. The EPA will use as guidance the State of Oregon's water quality standards [OAR 340-041-001] to determine if standards are exceeded. Projects or activities that are expected to exceed these levels will require individual 401 certification, as determined by the EPA.

The water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

Wetted Stream Width at Discharge Point	Approximate Downstream Point for Determining Compliance
Up to 30 feet	50 feet
>30 to 100 feet	100 feet
>100 feet to 200 feet	200 feet
>200 feet	300 feet
Lake, Pond, reservoir	Lesser of 100 feet or maximum surface dimension

EPA General Condition 3 – Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions

All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the U.S.

- a. For land disturbances during construction, the permittee must obtain and implement Construction Stormwater General Permit requirements where required [<https://www.epa.gov/npdes/stormwater-discharges-construction-activities>]
- b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided.

The EPA encourages prevention of discharges by managing stormwater on site through Low Impact Development principles and other prevention techniques. The EPA will use the applicable provisions of the Oregon Department of Environmental Quality's 2013 Construction Stormwater Best Management Practices manual and the 2013 Construction Stormwater Erosion and Sediment Control Manual as guidance in meeting the applicable water quality standards.

EPA General Condition 4 – Compliance with Requirements of the National Pollutant Discharge Elimination System Permit for Industrial or Municipal Activities

For projects and activities requiring coverage under an industrial or municipal (non-stormwater) NPDES permit, certification is based on compliance with the requirements of that permit. The EPA will determine if the project is compliant. The projects and activities not in compliance with NPDES requirements will require an individual 401 certification, as determined by the EPA.

EPA General Condition 5 – Projects or Activities Discharging to Impaired Waters

An individual 401 certification is required for projects or activities authorized under the Nationwide Permits (NWP) if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) *and* the discharge may result in further exceedance of a specific parameter for which the waterbody is listed. The EPA will determine if the discharge results in exceedance of a specific parameter. The current list of 303(d)-listed waterbodies is available on the Oregon's Department of Environmental Quality web site at: <http://www.deq.state.or.us/wq/assessment/rpt2012/search.asp> or by contacting DEQ's water quality staff.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved Total Maximum Daily Load, the permittee must provide documentation for EPA approval showing that the discharge is within the limits established in the TMDL. Locating a proposed project within a watershed with a TMDL can be done at: on EPA's web site <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10> with links to <http://www.deq.state.or.us/wq/tmdls/docs/TMDLStatusMap.pdf>

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved TMDL or an approved water quality management plan, the permittee must provide documentation for EPA approval demonstrating that the discharge will not result in further exceedance of the listed contaminant or impairment.

EPA General Condition 6 – Notification and 401 Water Quality Certification Application

For projects requiring an individual 401 certification, permittees must provide the EPA with the same documentation provided to the Corps (as described in the Corps' National General Condition 32, Pre-Construction Notification), including, when applicable:

- a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.
- b. Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps. Eelgrass delineation must be prepared in accordance with current methods recommended by the Corps and state agencies.
- c. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.
- d. Other applicable requirements of Corps National General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request and application for an individual 401 certification is not complete until the EPA is provided the applicable documents noted above and the EPA has received a copy of the Corps' verification letter stating the applicant must contact the EPA to obtain a 401 water quality certification providing coverage for a proposed project or activity under the NWP Program.

EPA General Condition 7 – Mitigation

An individual 401 certification is based on adequate compensatory mitigation being provided for unavoidable impacts to aquatic resources and other water quality-related impacts of projects or activities authorized under the NWP Program.

A 401 certification is contingent upon written approval from the EPA of the compensatory mitigation plan for projects and activities resulting in any of the following:

- a. impacts to any aquatic resources requiring special protection (as defined in the EPA General Condition 1);
- b. any impacts to tidal waters or non-tidal waters adjacent to tidal waters; or
- c. any impacts to aquatic resources greater than 1/10 acre.

Compensatory mitigation plans submitted to the EPA must be based on the 2008 Corps and EPA Joint Federal Rule on Compensatory Mitigation (see: https://www.epa.gov/sites/production/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf) and must include, at a minimum, the following:

- 1) A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
- 2) The nature of the proposed impacts (e.g., acreage of wetlands and functions lost or degraded).
- 3) The rationale for the mitigation site that was selected.
- 4) The ecological goals and objectives of the compensatory mitigation project.
- 5) How the mitigation project will be accomplished (work plan), including proposed

- performance standards for measuring success.
- 6) How the site will be maintained and monitored through time to assess progress towards goals and objectives.
 - 7) Submittal of an “as-built conditions report” upon construction of the mitigation
 - 8) Submittal of monitoring reports at agreed upon intervals showing the results of monitoring to meet performance standards and criteria.
 - 9) Legal site protection mechanism (conservation easement or restrictive covenant) to ensure that the compensatory mitigation site will be legally protected for the long-term.
 - 10) Long term management plan.
 - 11) Financial assurances.

EPA General Condition 8 – Temporary Fills

An individual 401 certification is required for any activity where temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90-day period begins when filling activity starts in the wetland or other waterbody.

EPA General Condition 9 – Designated Critical Resource Waters

An individual 401 certification is required for any proposed project or activity in waterbodies on the most current list of Designated Critical Resource Waters (per the Corps’ National General Condition #22).

EPA General Condition 10 – Fills Within 100-Year Floodplains

An individual 401 certification is required for any proposed project or activity that involves fill in waters of the U.S. and would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

[**Note:** The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.]

EPA General Condition 11 – Chemically Treated Wood

An individual 401 water quality certification is required if the permittee proposes to use wood products treated with biologically harmful leachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), unless the wood products meet the following conditions:

- a. Wood preservatives and their application must be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act,
- b. Use of chemically treated wood products must follow the Western Wood Preservatives Institute (WWPI) guidelines and best management practices to minimize the preservative migrating from treated wood into the aquatic environment (see: <http://preservedwood.org/HowTo/BestManagementPractices.aspx>)
- c. For new or replacement wood structures, the wood must be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood are encouraged and include

- untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
- d. All removal of chemically treated wood products (including pilings) must follow the most recent “EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State.”

EPA NWP-SPECIFIC WATER QUALITY CONDITIONS

1. Aids to Navigation.

EPA 401 Certification – Certified

2. Structures in Artificial Canals.

EPA 401 Certification – Certified

3. Maintenance.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- activities occur in fish bearing waters of the U.S. that extend beyond their prior footprint, or
- activities require excavation or dredging in open water.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.

EPA 401 Certification – Certified

5. Scientific Measurement Devices.

EPA 401 Certification – Certified

6. Survey Activities.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- the project or activity involves oil or natural gas exploration, or
- the project or activity requires trenching in waters of the U.S.

7. Outfall Structures and Associated Intake Structures.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- the project or activities have an associated outfall to a special aquatic site (e.g., mudflat, vegetated shallow, wetland), or
- the receiving waters cannot be diverted.

8. Oil and Gas Structures on the Outer Continental Shelf.

EPA 401 Certification – Certified

9. Structures in Fleeting and Anchorage Areas.

EPA 401 Certification – Certified

10. Mooring Buoys.

EPA 401 Certification – Certified

11. Temporary Recreational Structures.

EPA 401 Certification – Certified

12. Utility Line Activities.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- there are any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or
- there are any permanent access roads, temporary structures or fill associated with the utility line activities, or
- the project is authorized under one or more nationwide permit by the Corps that result(s) in greater than 1/10 acre of impacts to aquatic resources, or results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or over 300 linear feet of stream.

13. Bank Stabilization.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- the entire scope of the project is greater than 300 linear feet, or
- does not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions that are the only way to protect an existing transportation related structure), or
- proposes permanent fill in adjacent wetlands.

14. Linear Transportation Projects.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- the project is authorized under one or more nationwide permits by the Corps that result(s) in greater than 1/10 acre of impacts to aquatic resources, results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or over 300 linear feet of stream.

15. U.S. Coast Guard Approved Bridges.

EPA 401 Certification – Certified

16. Return Water from Upland Contained Disposal Areas.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

17. Hydropower Projects.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

18. Minor Discharges.

EPA 401 Certification – Certified

19. Minor Dredging.

EPA 401 Certification – Certified

20. Response Operations for Oil or Hazardous Substances.

EPA 401 Certification – Certified

21. Surface Coal Mining Operations.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

22. Removal of Vessels.

EPA 401 Certification – Certified

23. Approved Categorical Exclusions.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if the project or activities impact greater than 1/10 acre of aquatic resources, or greater than 300 linear feet of stream.

24. Indian Tribe or State Administered Section 404 Programs.

EPA 401 Certification – Certified

25. Structural Discharges.

EPA 401 Certification – Certified

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if the project or activities involve greater than 1/2 acre of wetlands, or 300 linear feet of fish bearing stream, or any activity in tidal wetlands or waters.

28. Modifications of Existing Marinas.

EPA 401 Certification – Certified

29. Residential Developments.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

30. Moist Soil Management for Wildlife.

EPA 401 Certification – Certified

31. Maintenance of Existing Flood Control Facilities.

EPA 401 Certification – Certified

32. Completed Enforcement Actions.

EPA 401 Certification – Certified

33. Temporary Construction, Access, and Dewatering.

EPA 401 Certification – Certified

34. Cranberry Production Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

35. Maintenance Dredging of Existing Basins.

EPA 401 Certification – Certified

36. Boat Ramps.

EPA 401 Certification – Certified

37. Emergency Watershed Protection and Rehabilitation.

EPA 401 Certification – Certified

38. Cleanup of Hazardous and Toxic Waste.

EPA 401 Certification – Certified

39. Commercial and Institutional Developments.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

40. Agricultural Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

41. Reshaping Existing Drainage Ditches.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if the scope of the project is greater than 500 linear feet.

42. Recreational Facilities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

43. Stormwater Management Facilities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

44. Mining Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

45. Repair of Uplands Damaged by Discrete Events.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if:

- the project or activity is greater than ½ acre, or
- the project or activity requires restoration waterward of the pre-event High Tide Line or Ordinary High Water Mark before the event occurred.

46. Discharges in Ditches.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

47. [Reserved].

48. Commercial Shellfish Aquaculture Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

49. Coal Remining Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

50. Underground Coal Mining Activities.

EPA 401 Certification – Denied

An individual 401 certification is required for all projects.

51. Land-Based Renewable Energy Generation Facilities

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if the project or activity affects greater than ½ acre of aquatic resources or 300 linear feet of stream.

52. Water-Based Renewable Energy Generation Pilot Projects.

EPA 401 Certification – Denied

53. Low-Head Dam Removal.

EPA 401 Certification – Denied

54. Living Shorelines.

EPA 401 Certification – Conditioned

An individual 401 certification is required for projects authorized under this NWP if the project is located within a special aquatic site (e.g., mudflat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish in marine waters.