



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

MAR 15 2002

Robert L. Suthard, Jr., Colonel  
District Engineer, Department of the Army  
Tulsa District, U.S. Army Corps of Engineers  
1645 South 101<sup>st</sup> East Avenue  
Tulsa, Oklahoma 74128-4609

RE: Clean Water Act §401 Water Quality Certification of the 2002 Nationwide Permits by the Environmental Protection Agency, Region 6 on Indian Country.

Dear Colonel Suthard:

The U.S. Environmental Protection Agency (EPA) has reviewed the final notice of the issuance of Nationwide Permits by the U.S. Army Corps of Engineers (COE), published on January 15, 2002, in the Federal Register. The effective date of the NWP's is March 18, 2002.

EPA is the certifying authority on Indian Country lands where a Tribe has not established water quality standards. Indian country, as defined in 18 U.S.C. 1151, means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, not withstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

In order to ensure Tribal concerns are addressed on projects that may affect Tribal Waters, EPA Region 6 is issuing WQC with conditions for all Indian Country in the States of Louisiana, New Mexico, Oklahoma, and Texas. Our intent is to protect water quality with this certification of the NWP's for projects that have no more than minimal adverse effects on the aquatic environment, both individually and cumulatively. Projects that have more than minimal adverse effects on the aquatic environment cannot be authorized by NWP's and will require an individual §404 permit and an individual §401 water quality certification. EPA Region 6 has developed a standard list of conditions (enclosed) that it believes will help to ensure water quality standards are maintained and are included in the §401 certification.

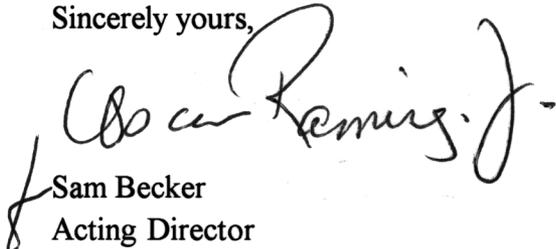
### 401 Certification Conditions of Nationwide Permits:

1. The permittee shall conduct all work in such a manner 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 your project must be provided a copy of this certification prior to commencement of activities.
3. All heavy equipment used in the project area 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 the 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 or 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. Any concrete to be poured shall be fully contained in mortar-tight forms to prevent accidental releases to water bodies. There shall be no discharge of any concrete to surface or groundwater. Wastewater from concrete production, vehicle wash down, and drilling shall be contained and treated, or removed offsite for proper disposal.
8. Construction shall take place during the dry season under low flow conditions to lessen the impacts to wetlands and to minimize the risk of surface water contamination.
9. If special circumstances call for work to occur during a period of flow in a river or stream, the flow must be temporarily diverted around the work area by placing diversion barriers around the work area to minimize sedimentation and turbidity. Acceptable diversion structures are non-erodible and include: sand bags, concrete bases, water bladders, and diversion boards.
10. The permittee shall restore all areas disturbed by construction activities to pre-construction contours, stabilize the soil, replant in native vegetation, and protect until well established in permanent vegetation. The permittee shall plant the appropriate native plant species to the affected area.

Page - 2 -

Provided that the enclosed conditions are followed, WQC is granted for the nationwide permits. EPA has the right to amend or revoke this §401 Certification of the Nationwide Permits when necessary to ensure compliance with applicable water quality standards. If you have any questions concerning our position on this matter please contact Jim Herrington, at 214-665-6694 or Richard Prather at (214)665-8333.

Sincerely yours,



Sam Becker  
Acting Director  
Water Quality Management Division

cc: Tribal Environmental Directors (electronic copy)