

Scott A. Thompson
Executive Director



Kevin Stitt
Governor

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

December 18, 2020

Mr. Andrew R. Commer
Chief, Regulatory Office
U.S. Army Corps of Engineers, Tulsa District
1645 South 101st East Avenue
Tulsa, OK 74128-4609

Re: Water Quality Certification for the U.S. Army Corps of Engineers (Corps) Nationwide Permits

Dear Mr. Commer:

The Department of Environmental Quality (DEQ) has received your request for a Water Quality Certification under Section 401 of the Federal Clean Water Act [33 U.S.C. §1251 et seq. (1972)], for the proposed issuance of the Nationwide Permits published September 15, 2020 in Federal Register. The Department of Environmental Quality rules governing 401 Certification are contained in Oklahoma Administrative Code (OAC) § 252:611-3 (2011) pursuant to 27A O.S. § 2-6-103(C)(2) (OSCN 1999). DEQ rules and regulations related to the 401 procedures are available at <https://www.deq.ok.gov/wp-content/uploads/degmainresources/611.pdf> or through contacting the DEQ Office of External Affairs at (800) 869-1400.

This Water Quality Certification supersedes all previous Water Quality Certifications for the Nationwide Permits in the State of Oklahoma.

DEQ requests that all Pre-Construction Notifications (PCN) and information pertaining to any project, regardless of size, located within any waters designated in Oklahoma's Water Quality Standards (WQS) as Outstanding Resource Waters (ORW), High Quality Waters (HQW), Sensitive Public and Private Water Supplies (SWS), and Appendix B Waters (OAC 785:45-5-25), which is proposed to be authorized under NWP 19, 23, 27, 33, or 37 be provided to the DEQ. This request is not a condition of certification.

DEQ requests that all PCN and information pertaining to any project which may result in a loss of more than 300 linear feet of stream which is proposed to be authorized under NWP 21, 29, 39, 40, 42, 43, 44, 51, or 52 be provided to the DEQ. Additionally, DEQ requests the opportunity to review and comment on these proposed actions following the time frames specified in the NWP General Condition 32. DEQ will expedite the review and notification process when practicable. This request is not a condition of certification.

Water Quality Certification for the proposed Nationwide Permits 3, 13, 18, 41, 45, 46, 53, C, D, and E is denied and require an individual water quality certification for all activities located within any Outstanding Resource Waters (ORW), High Quality Waters (HQW), Sensitive Public and Private Water Supplies (SWS), and Appendix B Waters as identified in WQS, OAC 785:45-5-25.

In order to determine compliance with water quality standards set forth in OAC 785:455-25 for these waters, projects covered under NWP on such waters shall be reviewed by DEQ.

Water Quality Certification for the proposed Nationwide Permits 49 and 50 are denied and require individual water quality certification for all activities in all watersheds of Oklahoma. We are concerned that use of these permits could lead to more than minimal adverse environmental effects on waters of the U.S. located in Oklahoma and may result in violation of WQS as set in OAC 785: 45-3-2. In order to determine compliance with water quality standards set forth in OAC 785:45-3 and OAC 785: 455-25 for Oklahoma waters of the U.S., projects covered under these two NWP shall be reviewed by DEQ.

For the proposed Nationwide Permit 16, *Return Water from Upland Contained Disposal Areas*, the certification is conditioned as follows to comply with OAC 785: 45-5-9(b) and OAC 785: 45-5-12(f)(7) and (8). A plan describing best management practices for sediment control in return water shall be submitted to, and approved by DEQ before any discharge can be commenced.

DEQ acknowledges that the potential to use NWP 34, 48, 54, A, and B in Oklahoma is not likely. However, for administrative clarity the Water Quality Certification is denied for the proposed NWP 34, 48, 54, A, and B.

This certification does not authorize industrial stormwater discharges, stormwater runoff from construction sites, or municipal/domestic wastewater discharges. These discharges may require permits from DEQ.

Subject to the exceptions noted above, the DEQ grants Clean Water Act 401 Water Quality Certification for the Corps Nationwide Permits subject to the following conditions:

1. Permittee shall take all reasonable measures to prevent spills of fuel or other pollutants to comply with CWA 301(a), OAC 785: 45-3-2, OAC 785:45-5-12(f)(4) and (6), and OAC 785: 45-5-19. In the event such spill occurs it shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM) to comply with CWA 301(a), OAC 785: 45-3-2, OAC 785: 45-5-12(f)(4) and (6), and OAC 785: 45-5-19.
3. Any material and fuels used in the project shall be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood to comply with CWA 301(a), OAC 785: 45-3-2, OAC 785: 45-5-12(f)(4) and (6), OAC 785: 45-5-19.
4. If the project is located on or may affect water impaired for turbidity and/or sediment, Best Management Practices and other controls shall be selected and implemented in order to control soil erosion and maintain compliance with WQS, OAC: 45-5-12(f)(7)(B). A copy of the current EPA-approved list of impaired waters (303(d) list) is available at [Integrated Report - 303\(d\) & 305\(b\) - Oklahoma Department of Environmental Quality](#).
5. For any project involving bank stabilization, the permittee shall consider implementing bioengineering practices in lieu of structural practices (e.g. riprap) to minimize impacts to an aquatic resource and enhance aquatic habitat to comply with WQS, OAC 785: 45-3-2.

Page 3
U.S. Army Corps of Engineers
Nationwide Permits
December 18, 2020

6. Post-project condition should not result in downstream water quality degradation which will interfere with the attainment or maintenance of an existing or designated beneficial uses to ensure compliance with WQS, OAC 785: 45-3-2.

If you have any questions regarding this Certification, please contact Elena Jigoulina at (405) 702-8200.

Sincerely,



Joe Long, Environmental Programs Manager
Watershed Planning Section
Water Quality Division

cc: David Carraway, Regulatory Project Manager, Regulatory Branch, Corps, Tulsa
Barry Bolton, Fisheries Chief, Oklahoma Department of Wildlife Conservation
Bill Cauthron, Chief, Water Quality Programs Division, Oklahoma Water Resources Board
Brooks Tramell, Monitoring, Assessment and Wetlands Programs, Oklahoma Conservation Commission
Daniel Landeros, EPA Region 6 (6WQ-EM)
Jennifer Lewis, Assistant Attorney General, Conservation Unit, OK Office of the Attorney General