

February 16, 2024

Mr. Andrew R. Commer
Regulatory Transportation Program Manager, Regulatory Office
1645 South 101st East Avenue
Tulsa, OK 74128-4609

Re: Water Quality Certification for General Permit 17 for Oklahoma Department of Transportation Bridge Replacement Projects of Existing Crossings, SWT-2018-00247 (GP17)

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. §1341) for a general permit 17 (GP17) for the replacement of existing Oklahoma Department of Transportation (ODOT) bridge projects in the state of Oklahoma, excluding Critical Resource Waters. This GP is issued pursuant to Section 404 of the Act. DEQ rules governing 401 Water Quality Certification are contained in Oklahoma Administrative Code (O.A.C.) § 252:611-3 pursuant to 27A O.S. § 2-6-103(C)(2). DEQ rules and regulations related to the 401 procedures are available at [611.pdf \(ok.gov\)](#) or through contacting the DEQ Office of Business and Regulatory Affairs (800) 869-1400.

Work authorized by this GP is limited to discharges of dredge or fill materials into waters of the United States for activities required for the construction, expansion, modification, or improvement of bridge and drainage structure replacement projects, provided the permanent loss of waters of the U.S. are limited to no more than 3 acres and does not exceed 1,000 linear feet. This GP is applicable to all waters in Oklahoma excluding Critical Resource Waters (CRWs). CRWs are Outstanding Resource Waters (ORWs) and their watersheds, High-Quality Waters (HQWs), Appendix B Waters, and Sensitive Public and Private Water Supplies (SWS) designated by the State of Oklahoma in the Water Quality Standards [OAC 252:730-5-25(c)]. In order to qualify for the proposed GP, mitigation must be proposed in accordance with the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines, and Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Part 332). The authorized activities shall not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream.

This conditioned Water Quality Certification does not supersede the requirements of a Section 404 permit from the U.S. Army Corps of Engineers, a permit required by the local floodplain board, or any other permit required for this project.

DEQ certifies that the proposed GP 17 permit is in compliance with Oklahoma's Water Quality Standards and with the Clean Water Act sections 208 (e), 301, 302, 303, 306, and 307 if it incorporates the following conditions:

:

1. Work in stream channels shall be limited to periods of low flow, when practicable, and with the minimum amount of equipment
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
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.

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4. For any project involving bank stabilization, the permittee shall consider installing bioengineering practices in lieu of structural practices (e.g. riprap) to minimize impacts to an aquatic resource and enhance aquatic habitat.
5. Environmental control practices, including but not limited to, effective erosion control measures and sediment control measures, shall be utilized during construction.
6. Appropriate procedures shall be utilized during the construction of this project to prevent the release of construction debris, fuels and lubricants, or other deleterious materials into the aquatic resources.
7. All excess fill material, waste materials, construction debris, etc., must be removed from a construction site upon completion of the project to avoid the introduction of pollutants into aquatic resources.
8. Fill materials used for bank stabilization must consist of material from an uncontaminated source and be free from toxic pollutants, and any erodible or turbidity-causing constituents to prevent water quality degradation.
9. All construction shall be done in a manner that will minimize increased turbidity and prevent downstream deposition of bank material from the construction sites during or after construction.

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: Marcus Ware, Regulatory Branch, U.S. Corps of Engineers, Tulsa
Kenneth Cunningham, Fisheries Chief, Oklahoma Department of Wildlife Conservation
Brooks Tramell, Monitoring, Assessment and Wetlands Programs, Oklahoma Conservation Commission
Daniel Landeros, EPA Region 6 (6WQ-EM)
Jennifer Lewis, Assistant Attorney General, Oklahoma Office of the Attorney General



February 29, 2024

TRANSMITTED VIA EMAIL

Mr. Andrew Commer
Chief, Regulatory Office
Tulsa District, U.S. Army Corps of Engineers
2488 East 81st Street
Tulsa, Oklahoma 74137
andrew.commer@usace.army.mil

RE: Clean Water Act Section 401 Water Quality Certification for the Reissuance of the U.S. Army Corps of Engineers, Tulsa District General Permit (GP)-17, Authorization SWT-2018-00247

Dear Mr. Commer:

This water quality certification (WQC) applies to the water quality-related impacts from the activity subject to the Federal license or permit, including the activity's construction and operation, for potential projects authorized under the proposed GP-17 into waters of the United States that occur within Indian Country within Oklahoma. GP-17 authorizes activities required for the construction, expansion, modification, or improvement of Oklahoma Department of Transportation bridge replacement projects (e.g., roads, highways, railways).

CWA Section 401(a)(1) requires applicants for Federal licenses or permits that may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge would originate. Where no state agency or Tribe has authority to give such certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. In this case, thirty-seven federally recognized Tribes in Oklahoma, without treatment in a similar manner as a state (TAS) for Section 401, do not have the authority to provide CWA Section 401 certification for projects occurring within the boundaries of their lands. Therefore, the EPA serves as the certifying authority on their behalf for GP-17. After reissuance, GP-17 is valid for a period of five years. GP-17 is applicable to all waters in Oklahoma excluding Critical Resource Waters (CRWs).¹ Additional limitations and conditions pertaining to construction parameters, natural habitat, and cultural and historic resources can be found in the draft permit at the following US Army Corp of Engineers website:

¹ CRWs are Outstanding Resource Waters (ORWs) and their watersheds, and High-Quality Waters (HQWs), Waterbodies and Watershed with Special Provisions, and Sensitive Public and Private Water Supplies (SWS) designated by the State of Oklahoma in Appendix A of the Water Quality Standards (Chapter 45 to OAC 252: Chapter 730). Both ORWs and HQWs include adjacent wetlands.

<https://www.swt.usace.army.mil/Missions/Regulatory/Public-Notices/Article/3528905/swt-2018-247/>

Tribes without TAS for CWA Section 401 in Oklahoma

1. Absentee-Shawnee Tribe of Indians of Oklahoma
2. Alabama-Quassarte Tribal Town
3. Apache Tribe of Oklahoma
4. Caddo Nation of Oklahoma
5. Cherokee Nation
6. Cheyenne and Arapaho Tribes
7. The Chickasaw Nation
8. The Choctaw Nation of Oklahoma
9. Citizen Potawatomi Nation
10. Comanche Nation
11. Delaware Nation
12. Delaware Tribe of Indians
13. Eastern Shawnee Tribe of Oklahoma
14. Fort Sill Apache Tribe of Oklahoma
15. Iowa Tribe of Oklahoma
16. Kaw Nation
17. Kialegee Tribal Town
18. Kickapoo Tribe of Oklahoma
19. Kiowa Indian Tribe of Oklahoma
20. Miami Tribe of Oklahoma
21. The Modoc Nation of Oklahoma
22. The Muscogee (Creek) Nation
23. The Osage Nation
24. Otoe-Missouria Tribe of Indians
25. Ottawa Tribe of Oklahoma
26. Peoria Tribe of Indians of Oklahoma
27. Ponca Tribe of Indians of Oklahoma
28. The Quapaw Tribe of Indians
29. Sac & Fox Nation
30. The Seminole Nation of Oklahoma
31. Seneca-Cayuga Nation
32. Shawnee Tribe
33. Thlopthlocco Tribal Town
34. Tonkawa Tribe of Indians of Oklahoma
35. United Keetoowah Band of Cherokee Indians of Oklahoma
36. Wichita and Affiliated Tribes
37. Wyandotte Nation

The EPA's Public Notice Process

On December 20, 2023, the EPA received a request for Section 401 certification from Tulsa District. The EPA notified Tribal partners and posted a public notice online with a comment period from January 2, 2024, to February 2, 2024. The EPA held a Tribal information session on January 11, 2024. No comments were received.

General Information

Work authorized by GP-17 is limited to discharges of dredge or fill material into waters of the United States for activities required for the construction, expansion, modification, or improvement of bridge replacement projects (e.g., roads, highways, railways) in waters of the United States, including adjacent wetlands, provided the following:

1. Permanent loss of waters of the United States are limited to no more than 3 acres and shall not exceed 1,000 linear feet of stream channel modification.
2. Mitigation shall be proposed in accordance with the Tulsa District Aquatic Resource Mitigation and Monitoring Guidelines, (current version); and Title 33 Part 332 - Compensatory Mitigation for Losses of Aquatic Resources, April 2008.
3. Any stream modification, including bank stabilization, is limited to the minimum necessary to construct or protect the bridge replacement project.
4. The authorized activities shall not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream.
5. The crossing is a single and complete project for crossing waters of the United States. Where a road segment has multiple crossings of waters, the Corps will consider whether it should use its discretionary authority to require an individual permit.

GP-17 also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bridge replacement project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

The following activities are not authorized by this GP:

1. New alignments or new bridges outside of the immediate vicinity of existing projects are not included in this GP.
2. Non-linear features associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers.

This permit does not authorize stream channelization, bank-to-bank filling, or culverting (replacing a span bridge with a reinforced concrete box) of more than 1,000 linear feet of jurisdictional natural stream systems. Non-Jurisdictional ditches, canals, swales, or other non-natural channelized systems are not included in this restriction. The authorized activities shall not increase flooding, or negatively impact the pre-project hydrologic flow characteristics or water quality of any affected stream. This permit does not authorize severance of connections to upstream or downstream waters.

Additional Information

The general information provided does not constitute a certification condition(s):

1. Project proponents are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or Tribal authorities. Project proponents should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.
2. Copies of the Corps permit including this certification should be kept on the job site and readily available to the public for reference. Project proponents should retain this certification in their files as documentation of the EPA's certification. This certification is specifically associated with the proposed GP-17 and expires five years from Corps reissuance date.
3. During project planning, the project proponent should notify the appropriate Tribal environmental office(s) of the project details and location.
4. If a project does not meet the requirements outlined in the following certification conditions and/or the Corps specific conditions, the project is not considered covered by this certification. In these cases, the project proponent can contact the EPA Region 6 for a project-specific certification, to submit pre-filing meeting requests, or for any certification-related questions by email at R6_CWA404_Regulatory@epa.gov.

Certification Conditions

On behalf of the Tribes in Oklahoma without TAS (listed above), CWA Section 401 certification for GP-17 is granted with conditions. The EPA has determined that any projects authorized under the GP-17 into waters of the United States that occur within Indian Country within the Oklahoma will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA, any Federal and state or Tribal laws or regulations implementing those sections, and any other water quality-related requirement of state or Tribal law, subject to the following condition pursuant to CWA section 401(d):

Condition 1: Pollutant Release Prevention

Project proponents shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes to into waters of the United States. To achieve this:

1. The project proponent shall conduct work during dry conditions, unless authorized by the Department of the Army permit.
2. The project proponent shall clean all equipment in a decontamination area prior to the equipment arriving on the project site. The project proponent shall inspect all equipment daily, and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid, and other chemical or petroleum leaks.

3. The project proponent shall stage all heavy equipment in uplands at least 50 feet away from waters of the United States, when not in use.
4. The project proponent shall clean all contaminated areas within 12 hours of spill detection and remove contaminated soil from the site within 24 hours or keep it contained in enclosed containers until it is removed from the site. Containers shall be located no closer than 50 feet to a waterbody or wetland.
5. In the case of spills, the project proponent shall deploy appropriate containment and/or absorbent materials immediately to prevent discharges from reaching waters of the United States.
 - If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 6 at R6_CWA404_Regulatory@epa.gov within 12 hours of discovery. As part of the notice, the project proponent shall provide photographs and a written plan for remedying the spill or unauthorized discharge. For emergencies or after hours, call the EPA emergency spill response at 1-800-424-8802.

Why this condition is necessary: This condition will ensure water quality is not degraded by oil, grease, gasoline, or other types of chemicals used to operate and maintain equipment used to complete the project. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species when equipment is cleaned prior to arriving on site and prior to entering waters of the United States. Citations that authorize this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72; 40 CFR § 230.74.

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Should your office have any questions, please feel free to contact Mr. Daniel Landeros of our staff at 214-665-8077, Landeros.Daniel@epa.gov.

Sincerely,

DZUNG NGO KIDD

Digitally signed by DZUNG NGO KIDD
Date: 2024.02.29 14:43:18 -06'00'

Dzung Kim Ngo Kidd
Acting Director
Region 6 Water Division

cc: Marcus Ware USACE Tulsa District; marcus.a.ware@usace.army.mil



Pawnee Nation of Oklahoma

Division of Natural Resources and Safety

P.O. Box 470, 301 Agency Road, Pawnee OK 74058 Phone: 918.762.3655
E-mail: dnrs@pawneenation.org

December 20, 2023

Mr. Andrew Commer, Chief
Regulatory Office
U.S. Army Corp. of Engineers
2488 E. 81st Street
Tulsa, OK 74137-4290

Re: Request for Clean Water Act Section 401 Certification for reauthorization of the "Complete" General Permit-17 (Project No. 2018-00247) in accordance with section 404 of the CWA (Dredge and Fill)

Mr. Commer,

The Pawnee Nation conditionally certifies the proposed General Permit-17 in accordance to section 404 of the CWA with the following conditions pursuant to Section 401(d) which are necessary to assure compliance with both applicable provisions of the U.S. Clean Water Act and Pawnee Nation Laws and Regulations.

The following conditions apply only to discharges occurring with-in Pawnee Indian Country:

- 1) Copies of the Notice of Intent (NOI) and Notice of Termination (NOT) must be provided to the Pawnee Nation at the same time it is submitted to the Environmental Protection Agency to the following address:
Pawnee Nation Department of Environmental Conservation and Safety
P.O. Box 470
Pawnee, OK 74058
Or email to dnrs@pawneenation.org
- 2) An electronic copy of the Storm Water Management Plan must be submitted to the Pawnee Nation Department of Environmental Conservation and Safety at the same time the NOI is submitted (as required under Part 5.0 of the PGP),
- 3) The Pawnee Nation Department of Environmental Conservation and Safety must be notified at 918.762.3655 immediately upon discovery of any noncompliance with any provision of the permit conditions.

These conditions are authorized under Pawnee Nation Code Title XII (Natural Resource Protection Act), specifically Chapter Four (Water Resource Protection), Chapter Five (Water Quality Standards), and Chapter Nine (Pollution Discharges).

If you have any questions or wish to discuss these conditions or other Section 401 and/or program issues please contact me, Mr. Monty Matlock, Director, Pawnee Nation Division of Natural Resources and Safety at 918.762.3655 and/or email at mmatlock@pawneenation.org.

Cordially,

Monty Matlock, Director
Division of Natural Resources and Safety
Pawnee Nation of Oklahoma