



SPECIAL PUBLIC NOTICE

U.S. Army Corps
of Engineers
Tulsa District

Issued: March 8, 2021

INFORMATIONAL PUBLIC NOTICE

PUBLIC NOTICE ANNOUNCING REGIONAL CONDITIONS AND SECTION 401 WATER QUALITY CERTIFICATION REGARDING THE REISSUANCE OF 12 NATIONWIDE PERMITS AND THE ISSUANCE OF 4 NEW NATIONWIDE PERMITS, IN THE STATE OF OKLAHOMA

Purpose of Public Notice:

This public notice is to announce and convey the 2021 Oklahoma Regional Conditions and Oklahoma Clean Water Act (CWA) Section 401 Water Quality Certifications. These documents and certifications will go into effect for the subject 16 nationwide permits (NWP) on March 15, 2021 and are attached to this public notice. The Corps is not seeking comments at this time.

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing NWP and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on March 15, 2021, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

- NWP 55 (fka A) – Seaweed Mariculture Activities
- NWP 56 (fka B) – Finfish Mariculture Activities
- NWP 57 (fka C) – Electric Utility Line and Telecommunications Activities
- NWP 58 (fka D) – Utility Line Activities for Water and Other Substances

Oklahoma Regional Conditions:

There are no regional conditions for the use of these 16 NWP's in the State of Oklahoma.

Oklahoma CWA Section 401 Water Quality Certifications:

Oklahoma Department of Environmental Quality (ODEQ), by letter (Encl 1) dated December 18, 2020, conditionally certified these 16 NWP's, with the exception of NWP 48, NWP 50, NWP 55 (fka A), and NWP 56 (fka B) which were denied statewide and NWP 57 (fka C) and NWP 58 (fka D) which were denied 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. Conditions for each of these 10 conditionally certified NWP's were defined in ODEQ's water quality certification letter. Regarding these 6 NWP's, **where water quality certification (WQC) was denied, applicants must first submit a pre-filing meeting request (40 CFR Part 121.4) to ODEQ; then, at least 30 days after submitting the ODEQ pre-filing meeting request, applicants must submit WQC application (40 CFR Part 121.5) directly to ODEQ, while concurrently providing a copy of this request to Tulsa District.** ODEQ has a separate permitting and review process from the Tulsa District; however, the agencies coordinate during the review process.

With the exception of NWP 55 (fka A) and NWP 56 (fka B) for which no water quality certification was requested, the Environmental Protection Agency (EPA) Region 6, by letter (Encl 2) dated December 15, 2020, on behalf of Absentee-Shawnee Tribe of Indians of Oklahoma, Alabama-Quassarte Tribal Town, Apache Tribe of Oklahoma, Caddo Nation of Oklahoma, Cherokee Nation, Cheyenne and Arapaho Tribes, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Citizen Potawatomi Nation, Comanche Nation, Delaware Nation, Delaware Tribe of Indians, Eastern Shawnee Tribe of Oklahoma, Fort Sill Apache Tribe of Oklahoma, Iowa Tribe of Oklahoma, Kaw Nation, Kialegee Tribal Town, Kickapoo Tribe of Oklahoma, Kiowa Indian Tribe of Oklahoma, Miami Tribe of Oklahoma, The Modoc Tribe of Oklahoma, The Muscogee (Creek) Nation, The Osage Nation, Otoe-Missouria Tribe of Indians, Ottawa Tribe of Oklahoma, Peoria Tribe of Indians of Oklahoma, Ponca Tribe of Indians of Oklahoma, The Quapaw Tribe of Indians, Sac & Fox Nation, The Seminole Nation of Oklahoma, Seneca-Cayuga Nation, Shawnee Tribe, Thlopthlocco Tribal Town, Tonkawa Tribe of Indians of Oklahoma, United Keetoowah Band of Cherokee Indians of Oklahoma, Wichita and Affiliated Tribes, and Wyandotte Nation granted CWA Section 401 certification, with no conditions, for these 16 NWP's.

EPA Region 6 has determined that any discharge that could be authorized under these 14 NWP's would comply with water quality requirements, as defined at 40 CFR 121.1(n).

Tulsa District requested that the Pawnee Nation of Oklahoma review and take action on the 401 water quality certification request for these 16 NWP's within a reasonable period of time. The Pawnee Nation of Oklahoma did not take action on this request. Tulsa District waived the Pawnee Nation water quality certification for these 16 NWP's on December 22, 2020.

Existing NWP's Not Subject to this Effort:

There are 40 existing NWP's that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWP's were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and those NWP's remain in effect until the Corps issues a final rule reissuing those NWP's or March 18, 2022, whichever comes first. The 40 2017 NWP's that remain in effect are:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- 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 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges

- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 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 34 – Cranberry Production Activities
- 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
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

The regional conditions for these 40 NWPs that were approved by division engineers in 2017 remain in effect while these 2017 NWPs remain in effect.

Andrew R. Commer
Chief, Regulatory Office

Enclosures

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/deqmainresources/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.

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

December 15, 2020

Andrew R. Commer
Chief, Regulatory Office
Tulsa District, U.S. Army Corps of Engineers
2488 East 81st Street
Tulsa, OK 74137

RE: Clean Water Act Section 401 Water Quality Certification for the 2020 U.S. Army Corps of Engineers
Section 404 Nationwide Permits Reissuance, on behalf of Indian tribes that have not received
Treatment in a Similar Manner as a State for Section 401 in EPA Region 6.

Dear Mr. Commer:

This water quality certification (WQC) applies to any potential point source discharges from potential projects authorized under the proposed reissuance of the following U.S. Army Corps of Engineers (Corps) Nationwide Permits (NWP) into waters of the United States that occur within tribal boundaries within the State of Oklahoma: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D and E. The Corps is not requesting certification for 11 NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B.

Section 401(a)(1) of the Clean Water Act (CWA) requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. 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, the following tribes do not have the authority to provide CWA Section 401 certification for discharges occurring within the boundaries of the aforementioned tribal lands, therefore, EPA Region 6 is making the certification decisions for discharges that may result from the potential projects authorized under the proposed Corps CWA 404 NWPs. Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA Region 6 circulated a letter dated September 18, 2020 offering to consult with tribes on the certification process and invite their participation.

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 Tribe 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

Reissuance of NWP's Description

The Corps is proposing to re-issue its existing NWP's and associated general conditions and definitions, with some modifications. The Corps states that it is "proposing these modifications to simplify and clarify the NWP's, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWP's authorize only activities with no more than minimal individual and cumulative adverse environmental effects." 85 FR 57298. For more details:

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

General Information

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

Project proponents for potential projects authorized under the NWP's are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWP's should conduct all work in such a manner as to comply with all Corps Section 404 permit conditions.

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 for potential projects authorized under the NWP's should retain this certification in their files with the applicable NWP's as documentation of EPA's certification decisions for the above-referenced proposed NWP's. This certification is specifically associated with the proposed NWP's described above and expires when those NWP's expire, five years from Corps issuance date.

During project planning, EPA highly recommends the project proponent notify the appropriate tribal environmental office of the project details and location.

Certification Determination

Grant (121.7(c)):

On behalf of the above listed tribes, CWA Section 401 certification, for the following proposed NWP's, is granted with no conditions. EPA Region 6 has determined that any discharge that could be authorized under the following proposed NWP's will comply with water quality requirements, as defined at 40 CFR 121.1(n).

NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, D, and E

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 Daniel Landeros of my staff at 214-665-8077, landeros.daniel@epa.gov.

Sincerely,

Charles Maguire

Charles W. Maguire
Director
Water Division