

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits

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March 7, 2017

Stephan A. Ryba, Chief
Regulatory Branch
New York District, U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278-0090

Diane Kozlowski, Chief
Regulatory Branch
Buffalo District, U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Re: **Section 401 Water Quality Certification**
USACOE Nationwide Permits
Effective Date: March 19, 2017
Expiration Date: March 18, 2022

Dear Mr. Ryba and Ms. Kozlowski:

This letter constitutes the New York State Department of Environmental Conservation's Section 401 Blanket Water Quality Certification (WQC) for the U.S. Army Corps of Engineer's Nationwide Permits, and the Regional Conditions issued by the Corps' New York and Buffalo Districts. The Nationwide Permits (NWP) were published in the *Federal Register* on January 6, 2017, and will become effective on March 19, 2017. Projects subject to the Grandfathering Provision for Expiring NWPs, will continue to be covered under the 2012 Blanket Water Quality Certificate.

Activities authorized by a Nationwide Permit must comply with the Nationwide Permit General Conditions. Nationwide Permit General Condition #27 indicates that "[T]he activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification..."

The case specific conditions for coverage under this Blanket Water Quality Certification include required General Conditions and may also include Special Conditions for a given Nationwide Permit-authorized activity. Activities that do not meet the required



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General or Special Conditions or activities that are not eligible for coverage under this Blanket WQC are required to obtain an Individual WQC from the NYSDEC following Uniform Procedures Act (UPA) procedures.”

This Certification is organized as follows:

List 1 – Nationwide Permits requiring no Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Appropriation Act of 1899

List 2 – Nationwide Permits granted Blanket Water Quality Certification provided the project meets **all** the required General Conditions.

List 3 – Nationwide Permits granted Blanket Water Quality Certification provided the project meets the required General Conditions and Special Conditions specific to that Nationwide Permit

List 4 – Nationwide Permits denied Water Quality Certification

List 1- Nationwide Permits requiring no Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Appropriation Act of 1899:

NWP 1. Aids to Navigation

NWP 2. Structures in Artificial Canals

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 24. Indian Tribe or State Administered Section 404 Programs

NWP 28. Modifications of Existing Marinas

NWP 35. Maintenance Dredging of Existing Basins

List 2 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets all the required General Conditions:

The Nationwide Permits listed below are hereby granted Section 401 Water Quality Certification in New York State provided that the project complies with the General Conditions of this Certification. Any party conducting the activities authorized by these Nationwide Permits that cannot comply with these conditions must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation.

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 13. Bank Stabilization

NWP 15. U.S. Coast Guard Approved Bridges
NWP 18. Minor Discharges
NWP 19. Minor Dredging
NWP 20. Response Operations for Oil and Hazardous Substances
NWP 22. Removal of Vessels
NWP 23. Approved Categorical Exclusions
NWP 30. Moist Soil Management for Wildlife
NWP 31. Maintenance of Existing Flood Control Facilities
NWP 32. Completed Enforcement Actions
NWP 34. Cranberry Production Activities
NWP 36. Boat Ramps
NWP 37. Emergency Watershed Protection and Rehabilitation
NWP 42. Recreational Facilities
NWP 45. Repair of Uplands Damaged by Discrete Events
NWP 51. Land-Based Renewable Energy Generation Facilities

Required General Conditions

1. *Non-contamination of Waters*

- All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds (frac-outs) or any other environmentally deleterious materials associated with the project.

2. *Installation and Replacement of Culverts*

To be covered under this blanket Water Quality Certification, all of the following criteria must be met:

- Culvert pipes shall be designed to safely pass a 2% annual chance storm event.
- This certification does not authorize the installation of any culverts that are not embedded beneath the existing grade of the stream channel.
- Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean (Ordinary) High Water Channel.
- The culvert bed slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
- This certification does not authorize work on culverts that provide sole access to "Critical Facilities"¹: An individual WQC must be obtained for work on these culverts.

¹ Critical Facilities are defined as facilities designed for bulk storage of chemicals, petrochemicals, hazardous or toxic substances or floatable materials; hospitals, rest homes, correctional facilities, dormitories, patient care facilities; major power generation, transmission or substation facilities, except for hydroelectric facilities; major communications centers, such as civil defense centers; or major emergency service facilities, such as central fire and police stations. (See 6 NYCRR Part 502.4(a) (17).)

- This certification does not authorize culvert rehabilitation projects that involve slip lining, or similar treatments.
 - This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.
3. *Discharge and Disturbance Limits of the Blanket WQC*
- For Nationwide Permits # 5, 7, 12, 13, 14, 15, 18, 19, 23, 25, 29, 31, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, utility line replacement projects under Nationwide Permit #3 and non-maintenance activities under Nationwide Permit #43.
 - the following discharge limits apply:
 - a) Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the U.S. must not exceed ¼ acre;
 - b) Temporary or permanent impacts (i.e., loss) to stream beds must not exceed 300 linear feet.
 - c) The discharge area limit under paragraph (a) plus the equivalent stream impact area limit under paragraph (b) must not exceed ¼ acre total.
 - For Nationwide Permits # 3, 4, 6, 20, 22, 27, 30, 33, 41 and maintenance activities under Nationwide Permit # 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.
 - If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.
4. *Bulkheads*
- This certification does not authorize the construction of new bulkheads or vertical walls.
 - This certification does not authorize the waterward extension of existing bulkheads.
 - New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.
5. *Maintenance of Water Levels*
- This certification does not authorize any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, with the exception of activities authorized by Nationwide Permit #27.
6. *Dewatering*
- Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
 - Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or

their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.

- Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
- All dewatering structures must be permanently removed and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.

7. *Endangered or Threatened Species*

- This certification does not authorize projects likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182.5 (a), (b) or projects likely to destroy or adversely modify the habitat of such species. Applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the NYS Department of Conservation Regional Office that the proposed activity will not be likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at <http://www.dec.ny.gov/animals/29338.html>.

If it is determined that the project is likely to result in the take of (or modify the habitat of such species) a New York listed endangered or threatened species , then this blanket water quality certification is not applicable, and the applicant will need an individual water quality certification from the department.

8. *Rare Mollusks*

- This Certification may not be issued for and does not authorize disturbances or discharges to waters of the state listed as supporting mollusks S-1 or S-2 on the New York State Natural Heritage database.
<http://www.dec.ny.gov/animals/29338.html>

9. *Prohibition Period for In-water Work*

In-water work is prohibited during the following time period:

- in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water Classification values can be determined on the DEC's Environmental Resource Mapper available on the

Departments Website @ <http://www.dec.ny.gov/gis/erm/> Work windows may be extended by the Regional Natural Resources Supervisor or their designee.

10. *Significant Coastal Fish and Wildlife Habitat*

- This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources. <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

11. *Coastal Erosion Hazard Areas*

- This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505. <http://www.dec.ny.gov/lands/86541.html>

12. *State-owned Underwater Lands*

Prior to undertaking any Nationwide Permit activity that will involve or occupy state-owned lands now or formerly under the waters of New York State, the party proposing the activity must first obtain all necessary approvals from:

New York State Office of General Services
Division of Real Estate Development
Corning Tower Building, 26th Floor
Empire State Plaza
Albany, NY 12242
Tel. (518) 474-2195

13. *Tidal Wetlands*

- This certification does not authorize any activities in tidal wetlands as defined in Article 25 of New York State Environmental Conservation Law, with the exception of activities authorized by Nationwide Permits # 4, 20 and 48. <http://www.dec.ny.gov/lands/4940.html>

14. *Wild, Scenic and Recreational Rivers*

- This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors. <http://www.dec.ny.gov/permits/6033.html>

15. *Floodplains*

- Authorized projects subject to this certification must first be in compliance with State and Local Floodplain Regulations prior to commencement of construction.

16. *Public Service Commission*

- This certification does not authorize activities regulated pursuant to Article VII or Article 10 of the New York State Public Service Law. For such projects, Section

401 Water Quality Certification is obtained from the New York State Public Service Commission.

17. *Utility Projects*

- This certification does not authorize maintenance or other activities associated with hydroelectric power generation projects.
- This certification does not authorize the construction of substation facilities or permanent access roads in wetlands.
- Excess materials resulting from trench excavation must be permanently removed from the waters of the United States and contained so that they do not re-enter any waters of the United States.

18. *Preventing the Spread of Terrestrial and Aquatic Invasive Species*

- To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within waters of the U.S. When using construction equipment projects authorized under this Certification shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.

List 3 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets the required General Conditions and the Special Conditions for the given Nationwide Permit:

The Nationwide Permits listed below are hereby granted Section 401 Water Quality Certification in New York State provided that the project complies with the required General Conditions listed under List 2 **and** with the designated Special Conditions specific to each of the following Nationwide Permits. Any party conducting the activities authorized by these Nationwide Permits that cannot comply with both the required General Conditions and the Special Conditions must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NWP 7. Outfall Structures and Associated Intake Structures

NWP 12. Utility Line Activities

NWP 14. Linear Transportation Projects

NWP 25. Structural Discharges

NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

NWP 29. Residential Developments

NWP 33. Temporary Construction, Access, and Dewatering

NWP 39. Commercial and Institutional Developments

NWP 40. Agricultural Activities

NWP 41. Reshaping Existing Drainage Ditches

NWP 43. Stormwater Management Facilities

NWP 46. Discharges in Ditches
NWP 48. Commercial Shellfish Aquaculture Activities

Special Conditions for NWP 7. Outfall Structures and Associated Intake Structures

- All intake structures constructed for the withdrawal of cooling water must adhere to the requirements of Part 316(b) of the Clean Water Act and 6 NYCRR Part 704.5.

Special Conditions for NWP 12 Utility Line Activities

- Materials resulting from Utility Line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed from waters of the United States within 30 days of deposition.
- Utility Line activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered by the Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.

Special Conditions for NWP 14. Linear Transportation Projects

- Linear transportation activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered by the Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
- This certification does not authorize the construction of new linear transportation facilities (such as new roads or crossings structures in riparian wetlands located within a FEMA designated 100 year floodplain).

Special Conditions for NWP 25. Structural Discharges

- This certification does not authorize structural discharges for any pile-supported structure with a surface area greater than 4,000 square feet.
- This certification does not authorize any structural support member with an area footprint greater than 64 square feet.
- This certification does not authorize piles or structural support members with spacing that has the effect of fill or that causes the buildup of bottom sediments due to wave action or shoreline drift.

Special Conditions for NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

- This certification authorizes only restoration projects conducted with oversight by

a federal or state natural resource agency, or a County Soil and Water Conservation District.

- This certification authorizes Army Corp required Wetland Mitigation measures of 5 acres or less in area.
- This certification does not authorize stream restoration projects over 300 feet in length. This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
- This certification does not authorize the conversion of one wetland type to another or the conversion of lotic (flowing water) communities to wetland or lentic (standing water) communities.

Special Conditions for NWP 29. Residential Developments

- This certification does not authorize the construction of new residential development projects in riparian wetlands located within a FEMA designated 100 year floodplain.

Special Conditions for NWP 33. Temporary Construction, Access, and Dewatering

- This certification authorizes activities that exist on-site for no more than 180 days from the date of installation.

Special Conditions for NWP 39. Commercial and Institutional Developments

- This certification does not authorize the construction of new commercial or institutional development projects in riparian wetlands located within a FEMA designated 100 year floodplain.

Special Conditions for NWP 40. Agricultural Activities

- This certification does not authorize any discharge of dredged or fill material into streams. Alteration of natural stream courses is not authorized by this certification.
- This certification authorizes only buildings necessary for the agricultural productivity of farmland.
- This certification does not authorize non-agricultural buildings on farms such as roadside stands.
- This certification does not authorize construction of ponds in wetlands.

Special Conditions for NWP 41. Reshaping Existing Drainage Ditches

- Sidecast organic soils may not be stacked deeper than 18 inches or in such a way as to interfere with surface water flow.
- This certification does not authorize sidecasting of non-organic soils into wetlands.
- This certification does not authorize in-stream channel re-shaping of Waters classified as "A", "B", or "C" under Article 15 of New York State Environmental Conservation Law.

Special Conditions for NWP 43. Stormwater Management Facilities

- Other than outfall structures and emergency spillways located within waters of the US, that will result in a 1/4 acre or less of discharge to waters of the state, this certification does not authorize the construction of new Stormwater Management Facilities within waters of the US.
- This certification authorizes the maintenance of existing storm water management facilities.

Special Conditions for NWP 46. Discharges in Ditches

- This certification does not authorize an activity disturbing or affecting a ditch that will result in the loss of more than ¼ acre of waters of the United States.

Special Conditions for NWP 48. Commercial Shellfish Aquaculture Activities

- This certification does not authorize the expansion of aquaculture activities into new areas of a project.

List 4 - Permits denied Section 401 Water Quality Certification:

The Nationwide Permits listed below are hereby denied a blanket Section 401 Water Quality Certification in New York State under a Corps Nationwide permit. Any party conducting the activities authorized by these NWPs must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation.

NWP 16. Return Water from Upland Contained Disposal Areas

NWP 17. Hydropower Projects

NWP 21. Surface Coal Mining Activities

NWP 38. Cleanup of Hazardous and Toxic Waste

NWP 44. Mining Activities

NWP 49. Coal Re-mining Activities

NWP 50. Underground Coal Mining Activities

NWP 52. Water-Based Renewable Energy Generation Pilot Projects

NWP 53. Low-Head Dam Removal

NWP 54. Living Shorelines

If you have any questions, please contact me at 518-402-9167.

Sincerely,



Kent P. Sanders
Deputy Chief Permit Administrator
Division of Environmental Permits