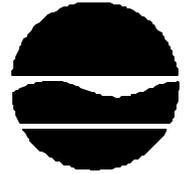


New York State Department of Environmental Conservation



Division of Environmental Permits, 4th Floor

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March 15, 2002

Richard Tomer, Chief
Regulatory Branch, New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
Room 1937
New York, NY 10278-0090

Paul G. Leuchner, Chief
Regulatory Branch, Buffalo District
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207

Re: Section 401 Water Quality Certification
January 15, 2002 Nationwide Permits

Dear Messrs. Tomer and Leuchner:

This constitutes New York State's decision on the Section 401 Water Quality Certification for Nationwide Permits (NWP) effective on March 16, 2002 and on the accompanying regional conditions proposed by both the New York and Buffalo Districts.

The certification is organized as follows:

List 1 - NWP) requiring no Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899.

List 2 - NWP) receiving a certification with restrictions on applicability or conditions as necessary to protect New York State water quality.

List 3 - General conditions applicable to all NWP) for which certification has been provided.

List 4 - NWP's denied certification.

List 1 - Permits requiring no Water Quality Certification:

NWP #1	Aids to navigation
NWP #2	Structures in Artificial Canals
NWP #8	Oil and Gas Structures
NWP #9	Structures in Fleeting and Anchorage Areas
NWP #10	Mooring Buoys (non-commercial and single boat)
NWP #11	Temporary Recreational Structures
NWP #24	State Administered Section 404 Program
NWP #28	Modification of Existing Marinas
NWP #35	Maintenance Dredging of Existing Basins

List 2 - Permits receiving Section 401 Water Quality Certification with restrictions on applicability or conditions as necessary to protect New York State water quality.

Section 401 Water Quality Certification

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that activities listed below, undertaken in accordance with all of the special and general conditions listed below, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWP's with no special conditions remain subject to general conditions unless otherwise indicated.

NWP #3 - Maintenance.

Special Conditions:

- 3-1: This certification does not apply to maintenance activities associated with hydro power projects.
- 3-2: Any replacement culvert must at least minimally exceed watershed discharge engineering specifications for culvert sizing to discourage blockage by beaver, and must be installed slightly below existing grade to provide for passage of aquatic life. (Exceeding culvert size specifications is not applicable in Long Island, New York City, or to those circumstance in which the NYS Department of Environmental Conservation is given project notification and determines that the requirement can be waived.)
- 3-3: This certification does not apply to any activity that results in an alteration to waters of the United States such as draining or altering water levels.
- 3-4: Dewatering shall be limited to immediate work areas that are coffer dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering shall be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
- 3-5: Cofferdams or diversions shall not be constructed in a manner that constricts channel widths or redirects flowing waters so as to cause or exacerbate erosion of the bed or banks of a watercourse.

NWP #4 - Fish and Wildlife Harvesting, Enhancement and Attraction Devices.

Special Conditions: none

NWP #5 - Scientific Measurement Devices.

Special Conditions: none

NWP #6 - Survey Activities.

Special Conditions: none

NWP #7 - Outfall Structures and Maintenance.

Special Conditions:

7-1 This certification does not apply to outfalls proposed for construction in any Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.

7-2 The applicant must provide the velocity in feet per second of the proposed intake and the name, drawings and general operational information of any device that the applicant proposes to use to prevent impingement or entrainment of fish and wildlife.

NWP #12 - Utility Line Discharges.

Special Conditions:

12-1: This certification does not apply to any utility line or transmission facility that is subject to the jurisdiction of the Federal Energy Regulatory Commission or the New York State Public Service Commission under Article VII of the Public Service Law.

12-2: Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be backfilled or removed within 30 days of the date of deposition.

12-3: Notwithstanding special condition 12-2, materials shall not be sidecast into any stream or other water body with measurable flow or in any tidal waters.

12-4: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

NWP #13 - Bank Stabilization.

Special Conditions:

13-1: This certification does not apply to any bank stabilization project more than 200 feet in length.

13-2: This certification does not apply to projects in Coastal Erosion Hazard Areas identified under Article 34 of the ECL and implementing regulations 6 NYCRR Part 505.

13-3: This certification does not apply to vertical bulkheads.

NWP #14 - Linear Transportation Project Crossings.

Special Condition:

14-1: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance, whether used singly or in conjunction with other linear transportation crossings.

NWP #18 - Minor Discharges.

Special Conditions: none

NWP #19 - Minor Dredging.

Special Conditions: none

NWP #20 - Oil Spill Cleanup.

Special Conditions: none

NWP #22 - Removal of Vessels.

Special Condition:

22-1 This certification does not apply to activities within 1,000 feet of areas that are designated as Significant Coastal Fish and Wildlife Habitats pursuant to 19 NYCRR Part 602 ; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

NWP #23 - Approved Categorical Exclusions.

Special Conditions:

23-1: This certification is expressly limited to those categorical exclusions listed in one of the following documents: (a) Regulatory Guidance Letter 87-10, Use of Nationwide Permit No. 23 for New Federal Highway Administration (FHWA) Categorical Exclusions; (b) Regulatory Guidance Letter 96-1, Use of Nationwide Permit Number 23 for U.S. Coast Guard Categorical Exclusions.

23-2: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

NWP #25 - Structural Discharges.

Special Conditions:

25-1: This certification does not apply to any structural 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.

25-2: This certification does not apply to any pile-supported structure with a surface area greater than 4,000 square feet.

25-3: This certification does not apply to any structural support member with a surface area greater than 64 square feet.

25-4: This certification does not apply to piles or structural support members with spacing between such members causing accretion of bottom sediments.

NWP #27 - Stream and Wetland Restoration Activities.

Special Conditions: none

NWP #30 - Moist Soil Management.

Special Conditions: none

NWP #31 - Maintenance of Existing Flood Control Facilities.

Special Conditions: none

NWP #32 - Completed Enforcement Actions

Special Condition:

32-1: This certification does not apply to enforcement actions resulting in the authorization of discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

NWP #33 - Temporary Construction, Access and Dewatering.

Special Conditions:

33-1: This certification does not apply to hydro power projects.

33-2: Dewatering shall be limited to immediate work areas that are coffer dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering shall be localized and not drain extensive areas of a water body or reduce the water level such that vegetation, fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.

33-3: Cofferdams or diversions shall not be constructed in a manner that constricts channel widths or redirects flowing waters so as to cause or exacerbate erosion of the bed or banks of a watercourse.

NWP #36 - Boat Ramps.

Special Conditions: none

NWP #37 - Emergency Watershed Protection and Rehabilitation.

Special Conditions: none

NWP #38 - Cleanup of Hazardous and Toxic Wastes.

Special Conditions: none

NWP #39 - Residential, Commercial and Institutional Developments.

Special Conditions:

39-1: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

39-2: This authorization does not apply to golf courses or to new construction or expansion of storm water facilities in waters of the United States, including wetlands.

NWP #40 - Agricultural Activities.

Special Conditions:

40-1: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

40-2: Any buildings constructed must be necessary for the agricultural production of the land.

NWP #41 - Reshaping Existing Drainage Ditches.

Special Condition:

41-1: This certification does not apply to any in-stream channel reshaping.

NWP #42 - Recreational Facilities.

Special Conditions:

42-1: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance.

42-2: This certification does not apply to development of new or expansion of existing golf courses and ski areas.

NWP #43 - Storm Water Management.

Special Conditions:

43-1: This authorization does not apply to establishing new or expanding existing storm water management facilities.

43-2: This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 linear feet of stream disturbance for maintenance of existing storm water management facilities.

List 3 - General Conditions applicable to all NWPs for which Certification has been provided are as follows:

1. Monitoring Requirement. The Corps of Engineers shall prepare and submit an annual report that evaluates the use and effectiveness of the Nationwide Permit program in New York State. Such report must contain, as a minimum, the number of times each Nationwide Permit has been used in the reporting period; the number of acres of disturbance or linear feet of disturbance on a by-permit basis; and the number of acres of mitigation required on a by-permit basis. The first report will be submitted by January 31, 2003 and by January 31 of each year following. At its discretion, and not as a substitute for the required annual report, the Corps may provide copies of any monthly reports that are submitted to headquarters.

2. This certification does not apply to any activity that is likely to jeopardize the continued existence of an endangered species or threatened species listed in 6 NYCRR Part 182 or which is likely to destroy or adversely modify the critical habitat of such species. Information on New York State endangered or threatened species may be obtained from the regional office of the NYS Department of Environmental

Conservation responsible for the area in which a proposed activity is to be undertaken or on the NYSDEC Website at: www.dec.state.ny.us/website/dfwmr/wildlife/endspec/index.html.

3. This certification does not apply to any activities occurring in aquatic sites identified in the attached list of Priority Natural Heritage sites.
4. 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:

NYS Office of General Services
Division of Real Estate Development
Corning Tower Building, 26th Floor
Empire State Plaza
Albany, NY 12242
Tel. (518) 474-4944
5. This authorization does not apply to any activities in the tidal wetlands of New York State with the exception of NWP numbers 4, 5, 6 and 20.
6. This certification does not apply to activities in Wild, Scenic and Recreational Rivers segments listed in the National Rivers Inventory.
7. This authorization does not allow the stacking of NWPs so that in combination they exceed 1/10 acre of fill or 200 linear feet of stream disturbance. When used in combination, the most restrictive conditions apply.
8. This certification does not address activities regulated under Articles VII and X of the New York State Public Service Law. For utility lines regulated pursuant to Article VII, the jurisdiction to issue or deny a Section 401 Water Quality Certification rests with the New York State Public Service Commission. For major electric generating facilities regulated pursuant to Article X, the jurisdiction to issue or deny a Section 401 Water Quality Certification rests with the New York State Board of Electric Generation and the Environment.

List 4 - Permits denied certification.

The following activities under the Nationwide Permit program are hereby denied Section 401 Water Quality Certification. Any party who proposes any such activity must first apply for and obtain a project specific Section 401 Water Quality Certification:

- NWP #15 - U.S. Coast Guard Approved Bridges
- NWP #16 - Return Water from Upland Contained Disposal Areas
- NWP #17 - Hydro Power Projects
- NWP #21 - Surface Coal Mining Activities
- NWP #29 - Single-Family Housing

NWP #34 - Cranberry Production Activities

NWP #44 - Mining Activities

If you have any questions, please contact me at (518) 402-9178.

Sincerely,

/s/

William R. Adriance
Chief Permit Administrator

cc: A. Marks, ACOE-Buffalo Dist.
B. Brown, ACOE-Buffalo Dist.
G. Nieves, ACOE-NY Dist.
H. Firstencel, ACOE-NY Dist.
S. Blow, NYS Dept. of Public Service
S. Resler, NYS Dept. of State
A. Bauder, NYSOGS
P. Riexinger, NYSDEC
K. Chytalo, NYSDEC
T. Snow, NYSDEC
S. Allen, NYSDEC
W. Nechamen, NYSDEC
M. Naughton, NYSDEC
Regional Permit Administrators, NYSDEC