

PUBLIC NOTICE

Effective Date: March 18, 2002

**U.S. ARMY CORPS OF ENGINEERS
AND
U.S. ENVIRONMENTAL PROTECTION AGENCY
AND
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

NATIONWIDE PERMITS

On January 15, 2002, in Part II of the *Federal Register* (Volume 67, Number 10), the U.S. Army Corps of Engineers published a Notice announcing the reissuance of all nationwide permits, including general conditions and definitions. The entire Notice is available for viewing from the Wyoming Regulatory Office website at <http://www.usace.army.mil/html/od-rwy/Wyoming.htm>.

After publication of the notice, Corps districts finished development of regional conditions for the nationwide permits. Regional conditions provide additional protection by ensuring that nationwide permits authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions also help ensure protection of high value waters within specific geographic areas.

Decision documents, including Environmental Assessments with Findings of No Significant Impact, have been prepared indicating that authorized activities comply with the requirements for issuance under general permit authority, including compliance with the Section 404(b)(1) Guidelines as published at 40 CFR Part 230 and the National Environmental Policy Act. Furthermore, the decision documents have been supplemented by Division Engineers to address decisions concerning regional conditions. These documents are available at the Omaha District Office, 106 South 15th Street, Omaha, Nebraska, 68102.

Publication of the notice also began a 60-day process for States and Tribes to make their Section 401 water quality certification decisions. Water quality certifications or waivers are required under Section 401 of the Clean Water Act for all discharges to waters of the United States to ensure that authorized activities do not violate applicable water quality standards. The Wyoming Department of Environmental Quality (WDEQ) is the agency responsible for issuing certifications for activities in Wyoming except for Tribal Lands on the Wind River Indian Reservation. The U.S. Environmental Protection Agency (EPA) is responsible for issuing certifications on Tribal lands in Wyoming. Copies of the water quality certifications issued by the WDEQ and the EPA are attached to this notice.

This notice contains a complete summary of the nationwide permits specifically for activities in the State of Wyoming. The summary includes general conditions with relevant information regarding regional conditions, important definitions, and water quality certifications. Therefore, this notice should be used as a guide on the applicability of nationwide permits for activities in Wyoming rather than the *Federal Register*.

It is important to note that several of the nationwide permits require notification of the District Engineer prior to undertaking authorized activities. The Wyoming Regulatory Office serves on behalf of the District Engineer for all regulatory actions in Wyoming. Therefore, all Preconstruction Notifications (PCNs) for activities in Wyoming must be sent to the Wyoming Regulatory Office at the address listed above. PCNs are required in instances where the Corps has determined that an individual review is necessary to ensure that authorized activities will result in minimal adverse effects on the aquatic environment and to ensure that threatened or endangered species are adequately protected. PCNs are also required for activities where water quality certification has been denied. In those instances, the Corps will request certification from the WDEQ or the EPA on behalf of the applicant to ensure compliance with water quality standards. All PCNs must contain information described in the Preconstruction Notification procedure on pages 26-27 of this notice.

All of the nationwide permits described in this notice will expire on **March 18, 2007**, unless otherwise modified, suspended, or revoked. Questions concerning the application of nationwide permits in Wyoming should be directed to the Wyoming Regulatory Office at the address listed above or by telephone at (307) 772-2300.

NATIONWIDE PERMITS

1. Aids to Navigation. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR Part 66, Chapter I, Subchapter C). (Section 10)

2. Structures in Artificial Canals. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the U.S. has been previously authorized. (See 33 CFR 322.5(g)). (Section 10)

3. Maintenance. Activities related to:

(i) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement, are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This permit authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(ii) Discharges of dredged or fill material, including excavation, into all waters of the U.S. to remove accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure, provided the permittee notifies the District Engineer. . The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the District Engineer under separate authorization. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the District Engineer.

(iii) Discharges of dredged or fill material, including excavation, into all waters of the U.S. for activities associated with the restoration of upland areas damaged by a storm, flood, or other discrete event, including the construction, placement, or installation of upland protection structures and minor dredging to remove obstructions in waters of the U.S. (Uplands lost as a result of a storm, flood, or other discrete event can be replaced without a Section 404 permit provided the uplands are restored to their original pre-event location. This permit is for the activities in waters of the U.S. associated with the replacement of the uplands.) The permittee must notify the District Engineer within 12 months of the date of the damage and the work must commence, within two years of the date of the damage. The permittee should provide evidence, such as recent topographic survey or photographs, to justify the extent of the proposed restoration. The restoration of the damaged areas cannot exceed the contours, or ordinary high water mark, that existed prior to the damage. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. Minor dredging to remove obstructions from the adjacent waterbody is limited to 50 cubic yards below the plane of the ordinary high water mark, and is limited to the amount necessary to restore the preexisting bottom contours of the waterbody. The dredging may not be done primarily to obtain fill for any restoration activities. The discharge of dredged or fill material and all related work needed to restore the upland must be part of a single and complete project. This permit cannot be used in conjunction with NWP 18 or NWP 19 to restore damaged upland areas. This permit does not authorize the replacement of lands lost through gradual erosion processes.

NATIONWIDE PERMITS (continued)

3. *Maintenance. (continued)*

Maintenance dredging for the primary purpose of navigation and beach restoration are not authorized by this permit. This permit does not authorize new stream channelization or stream relocation projects. Any work authorized by this permit must not cause more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increase flooding (See General Conditions 9 and 21). (Sections 10 and 404)

Note: This permit authorizes the minimal impact repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance.

4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.* Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging; and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This permit authorizes shellfish seeding provided this activity does not occur in wetlands or sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year). This permit does not authorize artificial reefs or impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. *Scientific Measurement Devices.* Devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the District Engineer. (Sections 10 and 404)

6. *Survey Activities.* Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey and sampling, and historic resources surveys. Discharges and structures associated with the recovery of historic resources are not authorized by this permit. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this permit; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this permit. The permit does not authorize any permanent structures. The discharge of drilling muds and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

7. *Outfall Structures and Maintenance.* Activities related to:

(i) construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act); and

(ii) maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures, accumulated sediments from small impoundments associated with outfall and intake structures, and accumulated sediments from canals associated with outfall and intake structures, provided the activity meets all of the following criteria:

- a. The permittee notifies the District Engineer;
- b. The amount of excavated or dredged material must be the minimum necessary to restore the outfalls, intakes, small impoundments and canals to original design capacities and design configurations (i.e., depth and width);
- c. The excavated or dredged material is deposited and retained at an upland site, unless otherwise approved by the District Engineer under separate authorization; and
- d. Proper soil erosion and sediment control measures are used to minimize reentry of sediments into waters of the U.S.

The construction of intake structures is not authorized by this permit, unless they are directly associated with an authorized outfall structure. For maintenance excavation and dredging to remove accumulated sediments, the notification must include information regarding the original design capacities and configurations of the facility and the presence of special aquatic sites in the vicinity of the proposed work. (Sections 10 and 404)

NATIONWIDE PERMITS (continued)

8. Oil and Gas Structures. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(1). (Where such limits have not been designated, or where changes are anticipated, District Engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(1). Any Corps review under this permit will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR Part 334; nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (Section 10)

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (Section 10)

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Section 10)

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

12. Utility Line Activities. Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the U.S. as follows:

(i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1, below). Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the U.S., provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary side casting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the U.S. through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

(ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a powerline or utility line in non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2 acre of non-tidal waters of the U.S.

(iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

(iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S. Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the U.S. and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the U.S. must be properly bridged or culverted to maintain surface flows.

NATIONWIDE PERMITS (continued)

12. Utility Line Activities. (continued)

The term "utility line" does not include activities which drain a water of the U.S., such as drainage tile or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this permit, the loss of waters of the U.S. includes the filled area plus waters of the U.S. that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs (i) through (iv) may not exceed a total of 1/2 acre loss of waters of the U.S. Waters of the U.S. temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the U.S. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the U.S. are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance, and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the U.S. that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This permit may authorize utility lines in or affecting navigable waters of the U.S. even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). (Sections 10 and 404)

Notification: The permittee must notify the District Engineer if any of the following criteria are met:

- (a) Mechanized land clearing in a forested wetland for the utility line right-of-way;
- (b) A Section 10 permit is required;
- (c) The utility line in waters of the U.S., excluding overhead lines exceeds 500 feet;
- (d) The utility line is placed within a jurisdictional area (i.e., a water of the U.S.), and it runs parallel to a streambed that is within that jurisdictional area;
- (e) Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the U.S.;
- (f) Permanent access roads constructed above grade in waters of the U.S. for a distance of more than 500 feet;
- or
- (g) Permanent access roads constructed in waters of the U.S. with impervious materials.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liquefiable, or slurry substances over navigable waters of the U.S., which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a Corps permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this permit. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the U.S. (i.e., Section 10 waters), copies of the PCN and permit verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the utility line to protect navigation.

NATIONWIDE PERMITS (continued)

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention provided the activity meets all of the following criteria:

- a. No material is placed in excess of the minimum needed for erosion protection;
- b. The bank stabilization activity is less than 500 feet in length;
- c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;
- d. No material is placed in any special aquatic site, including wetlands;
- e. No material is of the type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area;
- f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the District Engineer and the District Engineer determines the activity complies with the other terms and conditions of the permit and the adverse environmental effects are minimal both individually and cumulatively. This permit may not be used for the channelization of a water of the U.S. (Sections 10 and 404)

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, airport runways and taxiways) in waters of the U.S., including wetlands, if the activity meets the following criteria:

- a. This permit is subject to the following acreage limits: (1) For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than 1/2-acre of waters of the U.S.; or (2) For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than 1/3-acre of waters of the U.S.
- b. The permittee must notify the District Engineer if any of the following criteria are met: (1) The discharge causes the loss of greater than 1/10 acre of waters of the U.S.; or (2) There is a discharge in a special aquatic site, including wetlands;
- c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the U.S. to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses will be minimized to the maximum extent practicable;
- d. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;
- e. The width of the fill is limited to the minimum necessary for the crossing;
- f. This permit does not authorize stream channelization, and the authorized activities must 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 (see General Conditions 9 and 21);
- g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and
- h. The crossing is a single and complete project for crossing waters of the U.S. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (See 33 CFR 323.4).

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this permit and will require an individual or regional Section 404 permit. (Section 404)

NATIONWIDE PERMITS (continued)

16. Return Water from Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area. The dredging itself may require a Section 404 permit (33 CFR 323.2(d)), but will require a Section 10 permit if located in navigable waters of the U.S. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This permit satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures. (Section 404)

17. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project, which includes the fill, are licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 kW; and the permittee notifies the District Engineer; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended; provided the permittee notifies the District Engineer. (Section 404)

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the U.S. provided that the activity meets all of the following criteria:

a. The quantity of discharged material and the volume of excavated area do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

b. The discharge, including any excavated area, will not cause the loss of more than 1/10 acre of a special aquatic site, including wetlands. For the purposes of this permit, the acreage limitation includes the filled area and excavated area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the U.S. as a result of the project;

c. If the discharge, including any excavated area, exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line or if the discharge is in a special aquatic site, including wetlands, the permittee must notify the District Engineer. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites, including wetlands (Also see 33 CFR 330.1(e));

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of a stream diversion. (Sections 10 and 404)

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the U.S. (i.e., Section 10 waters) as part of a single and complete project. This permit does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the U.S. (see 33 CFR 322.5(g)). (Sections 10 and 404)

20. Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR Part 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (Sections 10 and 404)

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the U.S. associated with surface coal mining and reclamation operations provided the coal mining activities are authorized by the Department of the Interior, Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the District Engineer. In addition, to be authorized by this permit, the District Engineer must determine that the activity complies with the terms and conditions of the permit and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing. The Corps, at the discretion of the District Engineer, may require a bond to ensure success of the mitigation, if no other Federal or state agency has required one. For discharges in special aquatic sites, including wetlands, and stream riffle and pool complexes, the notification must also include a delineation of affected special aquatic sites, including wetlands.

NATIONWIDE PERMITS (continued)

21. *Surface Coal Mining Activities.* (continued)

Mitigation: In determining the need for, as well as the level and type of mitigation, the District Engineer will ensure no more than minimal adverse effects to the aquatic environment occur. As such, the District Engineer will determine on a case-by-case basis the requirement for adequate mitigation to ensure the effects to aquatic systems are minimal. In cases where OSM or the state has required mitigation for the loss of aquatic habitat, the Corps may consider this in determining the appropriate mitigation under Section 404. (Sections 10 and 404)

22. *Removal of Vessels.* Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This permit does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the District Engineer is notified and indicates that there is compliance with "Historic Properties" general condition. This permit does not authorize maintenance dredging, shoal removal, or riverbank snagging. Vessel disposal in waters of the U.S. may need a permit from EPA (see 40 CFR 229.3). (Sections 10 and 404)

23. *Approved Categorical Exclusions.* Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (Attn: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this permit of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this permit. (Sections 10 and 404)

24. *State Administered Section 404 Program.* Any activity permitted by a state administering its own Section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. Those activities that do not involve a Section 404 state permit are not included in this permit, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)). (Section 10)

25. *Structural Discharges.* Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This permit does not authorize filled structural members that would support buildings, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this permit. The structure itself may require a Section 10 permit if located in navigable waters of the U.S. (Section 404)

26. *Reserved.*

27. *Stream and Wetland Restoration Activities.* Activities in waters of the U.S. associated with the restoration of former waters, the enhancement of degraded tidal and non-tidal wetlands and riparian areas, the creation of tidal and non-tidal wetlands and riparian areas, and the restoration and enhancement of non-tidal streams and non-tidal open water areas as follows:

a. The activity is conducted on: (1) Non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS) or the Natural Resources Conservation Service (NRCS) or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or

NATIONWIDE PERMITS (continued)

27. Stream and Wetland Restoration Activities. (continued)

a. (2) Reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency (the future reversion does not apply to streams or wetlands created, restored, or enhanced as mitigation for the mining impacts, nor naturally due to hydrologic or topographic features, nor for a mitigation bank); or (3) Any other public, private or tribal lands;

b. Notification: For activities on any public or private land that are not described by paragraphs (a)(1) or (a)(2) above, the permittee must notify the District Engineer; and

c. Planting of only native species should occur on the site.

Activities authorized by this permit include, to the extent that a Corps permit is required, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structure; the placement of instream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized landclearing to remove non-native invasive, exotic or nuisance vegetation; and other related activities.

This permit does not authorize the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This permit does not authorize stream channelization. This permit does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this permit authorizes the relocation of non-tidal waters, including non-tidal wetlands, on the project site provided there are net gains in aquatic resource functions and values. For example, this permit may authorize the creation of an open water impoundment in a non-tidal emergent wetland, provided the non-tidal emergent wetland is replaced by creating that wetland type on the project site. This permit does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Reversion: For enhancement, restoration and creation projects conducted under paragraph (a)(3), this permit does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. For restoration, enhancement, and creation projects conducted under paragraphs (a)(1) and (a)(2), this permit also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities). The reversion must occur within five years after expiration of a limited term wetland restoration or creation agreement or permit, even if the discharge occurs after this permit expires. This permit also authorizes the reversion of wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned, in accordance with a binding agreement between the landowner and NRCS or FWS (even though the restoration, enhancement, or creation activity did not require a Section 404 permit). The five-year reversion limit does not apply to agreements without time limits reached under paragraph (a)(1). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate State agency executing the agreement or permit. Prior to any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at the future date. (Sections 10 and 404)

Note: Compensatory mitigation is not required for activities authorized by this permit, provided the authorized work results in a net increase in aquatic resource functions and values in the project area. This permit can be used to authorize compensatory mitigation projects, including mitigation banks, provided the permittee notifies the District Engineer, and the project includes compensatory mitigation for impacts to waters of the U.S. caused by the authorized work. However, this permit does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition. This permit can be used to authorize impacts at a mitigation bank, but only in circumstances where it has been approved under the Interagency Federal Mitigation Bank Guidelines.

NATIONWIDE PERMITS (continued)

28. *Modification of Existing Marinas.* Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the U.S. is authorized by this permit. (Section 10)

29. *Single Family Housing.* Discharges of dredged or fill material into non-tidal waters of the U.S., including non-tidal wetlands, for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

- a. The discharge does not cause the loss of more than 1/4 acre of non-tidal waters of the U.S., including non-tidal wetlands;
- b. The permittee notifies the District Engineer;
- c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;
- d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this permit may not exceed an aggregate total loss of waters of the U.S. of 1/4 acre for the entire subdivision;
- e. An individual may use this permit only for a single-family home for a personal residence;
- f. This permit may be used only once per parcel;
- g. This permit may not be used in conjunction with NWP 14 or NWP 18 for any parcel; and
- h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this permit, the acreage of loss of waters of the U.S. includes the filled area previously permitted, the proposed filled area, and any other waters of the U.S. that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other permit is used in conjunction with this permit, the total acreage of impacts to waters of the U.S. of all permits combined can not exceed 1/4 acre. This permit authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this permit, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or the individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership". (Sections 10 and 404)

30. *Moist Soil Management for Wildlife.* Discharges of dredged or fill material and maintenance activities that are associated with moist soil management for wildlife performed on non-tidal Federally-owned or managed, State-owned or managed property, and local government agency-owned or managed property, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of dikes; and plowing or discing to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc. to preclude water quality degradation due to erosion and sedimentation. This permit does not authorize the construction of new dikes, roads, water control structures, etc. associated with the management areas. This permit does not authorize converting wetlands to uplands, impoundments or other open water bodies. (Section 404)

31. *Maintenance of Existing Flood Control Facilities.* Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, and channels that

(i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time it was constructed or;

(ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance.

Activities authorized by this permit are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline" as described in the definition below.

NATIONWIDE PERMITS (continued)

31. *Maintenance of Existing Flood Control Facilities.* (continued)

Activities including the discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that has previously been determined to be within the maintenance baseline are authorized under this permit. This permit does not authorize the removal of sediment and associated vegetation from the natural water courses except to the extent that these have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the U.S., and proper siltation controls must be used. (Activities of any kind that result in only incidental fallback, or only the cutting and removing of vegetation above the ground, e.g., mowing, rotary cutting, and chainsawing, where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material, do not require a Section 404 permit in accordance with 33 CFR 323.2(d)(2).)

Notification: After the maintenance baseline is established, and before any maintenance work is conducted, the permittee must notify the District Engineer. The notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five year (or less) maintenance plan.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by this permit, subject to any case-specific conditions required by the District Engineer. The District Engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. If no evidence of the constructed capacity exist, the approved constructed capacity will be used. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the design capacities of the flood control facility. The documentation will also include BMPs to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.)

Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this permit cannot be used until the District Engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this permit. This permit does not authorize maintenance of a flood control facility that has been abandoned (i.e. has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner).

Mitigation: The District Engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental impacts are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the District Engineer will not delay needed maintenance, provided the District Engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline. In determining appropriate mitigation, the District Engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require compensatory mitigation and/or BMPs as appropriate.

Emergency Situations: In emergency situations, this permit may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate. (Sections 10 and 404)

NATIONWIDE PERMITS (continued)

32. Completed Enforcement Actions. Any structure, work or discharge of dredged or fill material, remaining in place, or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act (CWA) and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the CWA, provided that:

a. The unauthorized activity affected no more than 5 acres of non-tidal wetlands or 1 acre of tidal wetlands;

b. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this permit; and

c. The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this permit and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the CWA, Sec 107 of CERCLA (or Superfund), Section 312 of NMSA, Section 1002 of the Oil Pollution Act of 1990 (OPA), or the Park System Resource Protection Act at 16 U.S.C. '19jj, to the extent that a Corps permit is required.

For either (i), (ii) or (iii) above, compliance is a condition of the permit itself. Any authorization under this permit is automatically revoked if the permittee does not comply with the terms of this permit or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement or fails to complete the work by the specified completion date. This permit does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR Part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

33. Temporary Construction Access and Dewatering. Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard, or for other construction activities not subject to the Corps or U.S. Coast Guard regulations. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location, following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR Part 322)

The permittee must notify the District Engineer. The notification must include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources. The District Engineer will add special conditions, where necessary, to ensure that adverse environmental effects are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g., construction mats in wetlands where practicable). (Sections 10 and 404)

NATIONWIDE PERMITS (continued)

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided that the activity meets all of the following criteria:

- a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, does not exceed 10 acres of waters of the U.S., including wetlands;
- b. The permittee notifies the District Engineer in accordance with the “*Notification*” General Condition. The *notification* must include a delineation of affected special aquatic sites, including wetlands; and,
- c. The activity does not result in a net loss of wetland acreage. This permit does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this permit, the cumulative total of 10 acres will be measured over the period that this permit is valid. (Section 404)

35. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, access channels to marina basins or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less, provided the dredged material is disposed of at an upland site and proper siltation controls are used. (Section 10)

36. Boat Ramps. Activities required for the construction of boat ramps provided:

- a. The discharge into waters of the U.S. does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);
- b. The boat ramp does not exceed 20 feet in width;
- c. The base material is crushed stone, gravel or other suitable material;
- d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland;
- e. No material is placed in special aquatic sites, including wetlands.

Dredging to provide access to the boat ramp may be authorized by another nationwide permit, regional general permit, or individual permit pursuant to Section 10 if located in navigable waters of the U.S. (Sections 10 and 404)

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- a. The Natural Resources Conservation Service which is a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR Part 624); or
- b. The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 509.13); or
- c. The Department of Interior for wildland fire management burned area emergency stabilization and rehabilitation (Department of the Interior Manual, Part 620, Chapter 3).

For all of the above provisions, the District Engineer must be notified. (see 33 CFR 330.1(e)) (Sections 10 and 404)

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the District Engineer. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this permit. This permit does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. Activities undertaken entirely on a CERCLA site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. (Sections 10 and 404)

NATIONWIDE PERMITS (continued)

39. Residential, Commercial, and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of residential, commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). The construction of new ski areas or oil and gas wells is not authorized by this permit. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals and places of worship. The activities listed above are authorized, provided the activities meet all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this permit and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee must notify the District Engineer if any of the following criteria are met: (1) The discharge causes the loss of greater than 1/10 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters; or (2) The discharge causes the loss of any open waters, including perennial or intermittent streams, below the ordinary high water mark (see Note below); or (3) The discharge causes the loss of greater than 300 linear feet of intermittent stream bed. In such case, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the permit, determine adverse environmental effects are minimal, both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;

e. The discharge is part of a single and complete project;

f. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable. The notification, when required, must include a written statement explaining how avoidance and minimization of losses of waters of the U.S. were achieved on the project site. Compensatory mitigation will normally be required to offset the losses of waters of the U.S. The notification must also include a compensatory mitigation proposal for offsetting unavoidable losses of waters of the U.S. If an applicant asserts that the adverse effects of the project are minimal without mitigation, then the applicant may submit justification explaining why compensatory mitigation should not be required for the District Engineer's consideration;

g. When this permit is used in conjunction with any other permit, any combined total permanent loss of waters of the U.S. exceeding 1/10 acre requires that the permittee notify the District Engineer;

h. Any work authorized by this permit must not cause more than minimal degradation of water quality or more than minimal changes to the flow characteristics of any stream;

i. For discharges causing the loss of 1/10 acre or less of waters of the U.S. the permittee must submit a report, within 30 days of completion of the work, to the District Engineer that contains the following information: (1) The name, address, and telephone number of the permittee; (2) The location of the work; (3) A description of the work; (4) The type and acreage of the loss of waters of the U.S. (e.g., 1/12 acre of emergent wetlands); and (5) The type and acreage of any compensatory mitigation used to offset the loss of waters of the U.S.

j. If there are any open waters or streams within the project area, the permittee will establish and maintain, to the maximum extent practicable, wetland or upland vegetated buffers next to those open waters or streams. Deed restrictions, conservation easements, protective covenants, or other means of land conservation and preservation are required to protect and maintain the vegetated buffers established on the project site; and

Only residential, commercial, and institutional activities with structures on the foundation(s) or building pad(s), as well as the attendant features, are authorized by this permit. The compensatory mitigation proposal required in paragraph (f) of this permit may be either conceptual or detailed. The wetland or upland vegetated buffer required in paragraph (j) of this permit will be determined on a case-by-case basis by the District Engineer for addressing water quality concerns.

NATIONWIDE PERMITS (continued)

39. Residential, Commercial, and Institutional Developments. (continued)

The required wetland or upland vegetated buffer is part of the overall compensatory mitigation requirement for this permit. If the project site was previously used for agricultural purposes and the farm owner/operator used NWP 40 to authorize activities in waters of the U.S. to increase production or construct farm buildings, this permit cannot be used by the developer to authorize additional activities in waters of the U.S. on the project site in excess of the acreage limit (i.e., the combined acreage loss authorized under NWPs 39 and 40 cannot exceed 1/2 acre).

Subdivisions: For residential subdivisions, the aggregate total loss of waters of the U.S. authorized by this permit cannot exceed 1/2 acre. This includes any loss of waters associated with development of individual subdivision lots.

Note: Areas where wetland vegetation is not present should be determined by the presence or absence of an ordinary high water mark or bed and bank. Areas that are waters of the U.S. based on this criterion would require a preconstruction notification although water is infrequently present in the stream channel (except for ephemeral waters, which do not require a preconstruction notification under paragraph (c)(2) above; however, activities that result in the loss of greater than 1/10 acre of ephemeral waters would require preconstruction notifications under paragraph (c)(1) above). (Sections 10 and 404)

40. Agricultural Activities. Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for improving agricultural production and the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the U.S.; and similar activities, provided the permittee complies with the following terms and conditions:

a. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is a USDA program participant: (1) The permittee must obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS in accordance with the provisions of the Food Security Act of 1985, as amended (16 U.S.C. 3801 et seq.); (2) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract; (3) The permittee must have an NRCS-certified wetland delineation; (4) The permittee must implement an NRCS-approved compensatory mitigation plan that fully offsets wetland losses, if required; and (5) The permittee must submit a report, within 30 days of completion of the authorized work, to the District Engineer that contains the following information: (a) The name, address, and telephone number of the permittee; (b) The location of the work; (c) A description of the work; (d) The type and acreage (or square feet) of the loss of wetlands (e.g., 1/3 acre of emergent wetlands); and (e) The type, acreage (or square feet), and location of compensatory mitigation (e.g., 1/3 acre of emergent wetlands on the farm tract; credits purchased from a mitigation bank); or

b. For discharges into non-tidal wetlands to improve agricultural production, the following criteria must be met if the permittee is not a USDA program participant (or a USDA program participant for which the proposed work does not qualify for authorization under paragraph (a) of this permit): (1) The discharge into non-tidal wetlands does not result in the loss of greater than 1/2 acre of non-tidal wetlands on a farm tract; (2) The permittee must notify the District Engineer if the discharge results in the loss of greater than 1/10 acre of non-tidal wetlands; (3) The notification must include a delineation of affected wetlands; and (4) The notification must include a compensatory mitigation proposal to offset losses of waters of the United States; or

c. For the construction of building pads for farm buildings, the discharge does not cause the loss of greater than 1/2 acre of non-tidal wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) and the permittee must notify the District Engineer; and

d. Any activity in other waters of the U.S. is limited to the relocation of existing serviceable drainage ditches constructed in non-tidal streams. This permit does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this permit, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulative. For impacts exceeding 300 linear feet of impacts to existing serviceable ditches constructed in intermittent non-tidal streams, the permittee must notify the District Engineer; and

NATIONWIDE PERMITS (continued)

40. *Agricultural Activities.* (continued)

e. The term "farm tract" refers to a parcel of land identified by the Farm Service Agency. The Corps will identify other waters of the U.S. on the farm tract. NRCS will determine if a proposed agricultural activity meets the terms and conditions of paragraph (a) of this permit, except as provided below. For those activities that require notification, the District Engineer will determine if a proposed agricultural activity is authorized by paragraphs (b), (c), and/or (d) of this permit. USDA program participants requesting authorization for discharges of dredged or fill material into waters of the U.S. authorized by paragraphs (c) or (d) of this permit, in addition to paragraph (a), must notify the District Engineer and the District Engineer will determine if the entire single and complete project is authorized by this permit. Discharges of dredged or fill material into waters of the U.S. associated with completing required compensatory mitigation are authorized by this permit. However, total impacts, including other authorized impacts under this permit, may not exceed the 1/2 acre limit of this permit. This permit does not affect, or otherwise regulate, discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the Clean Water Act, even though a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from NRCS pursuant to the Food Security Act of 1985, as amended, may be required. Activities authorized by paragraphs (a) through (d) may not exceed a total of 1/2 acre on a single farm tract. If the site was used for agricultural purposes and the farm owner/operator used either paragraphs (a), (b), or (c) of this permit to authorize activities in waters of the U.S. to increase agricultural production or construct farm buildings, and the current landowner wants to use NWP 39 to authorize residential, commercial, or industrial development activities in waters of the U.S. on the site, the combined acreage loss authorized by NWPs 39 and 40 cannot exceed 1/2 acre. (Section 404)

41. *Reshaping Existing Drainage Ditches.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in these waters. The reshaping of the ditch cannot increase drainage capacity beyond the original design capacity or expand the area drained by the ditch as originally designed (i.e., the capacity of the ditch must be the same as originally designed and it cannot drain additional wetlands or other waters of the U.S.). Compensatory mitigation is not required because the work is designed to improve water quality (e.g., by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, increase uptake of nutrients and other substances by vegetation, etc.). The permittee must notify the District Engineer if greater than 500 linear feet of drainage ditch will be reshaped. Material resulting from excavation may not be permanently sidecast into waters but may be temporarily sidecast (up to three months) into waters of the U.S., provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. This permit does not apply to reshaping drainage ditches constructed in uplands, since these areas are not waters of the U.S., and thus no permit from the Corps is required, or to the maintenance of existing drainage ditches to their original dimensions and configuration, which does not require a Section 404 permit (see 33 CFR 323.4(a)(3)). This permit does not authorize the relocation of drainage ditches constructed in waters of the U.S.; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This permit does not authorize stream channelization or stream relocation projects. (Section 404)

42. *Recreational Facilities.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction or expansion of recreational facilities, provided the activity meets all of the following criteria:

a. The discharge does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;

b. The discharge does not cause the loss of greater than 300 linear feet of a stream bed, unless for intermittent stream beds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this permit and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

c. The permittee notifies the District Engineer for discharges exceeding 300 linear feet of impact of intermittent stream beds. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the permit, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed;

NATIONWIDE PERMITS (continued)

42. *Recreational Facilities.* (continued)

- d. For discharges causing the loss of greater than 1/10 acre of non-tidal waters of the U.S., the permittee must notify the District Engineer;
- e. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of affected special aquatic sites;
- f. The discharge is part of a single and complete project; and
- g. Compensatory mitigation will normally be required to offset the losses of waters of the U.S. The notification must also include a compensatory mitigation proposal to offset authorized losses of waters of the U.S.

For the purposes of this permit, the term "recreational facility" is defined as a recreational activity that is integrated into the natural landscape and does not substantially change preconstruction grades or deviate from natural landscape contours. For the purpose of this permit, the primary function of recreational facilities does not include the use of motor vehicles, buildings, or impervious surfaces. Examples of recreational facilities that may be authorized by this permit include hiking trails, bike paths, horse paths, nature centers, and campgrounds (excluding trailer parks). This permit may authorize the construction or expansion of golf courses and the expansion of ski areas, provided the golf course or ski area does not substantially deviate from natural landscape contours. Additionally, these activities are designed to minimize adverse effects to waters of the U.S. and riparian areas through the use of such practices as integrated pest management, adequate stormwater management facilities, vegetated buffers, reduced fertilizer use, etc. The facility must have adequate water quality management measures in accordance with General Condition 9, such as stormwater management facility, to ensure that the recreational facility results in no substantial adverse effects to water quality. This permit also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity. This permit does not authorize other buildings, such as hotels, restaurants, etc. The construction or expansion of playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, and the construction of new ski areas are not authorized by this permit. (Section 404)

43. *Stormwater Management Facilities.* Discharges of dredged or fill material into non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, for the construction and maintenance of stormwater management facilities, including activities for the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins, provided the activity meets all of the following criteria:

- a. The discharge for the construction of new stormwater management facilities does not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters;
- b. The discharge does not cause the loss of greater than 300 linear feet of a streambed, unless for intermittent streambeds this criterion is waived in writing pursuant to a determination by the District Engineer, as specified below, that the project complies with all terms and conditions of this permit and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;
- c. For discharges causing the loss of greater than 300 linear feet of intermittent streambeds, the permittee notifies the District Engineer. In such cases, to be authorized the District Engineer must determine that the activity complies with the other terms and conditions of the permit, determine the adverse environmental effects are minimal both individually and cumulatively, and waive this limitation in writing before the permittee may proceed
- d. The discharge of dredged or fill material for the construction of new stormwater management facilities in perennial streams is not authorized;
- e. For discharges or excavation for the construction of new stormwater management facilities or for the maintenance of existing stormwater management facilities causing the loss of greater than 1/10 acre of non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the permittee notifies the District Engineer. The notification must include: (1) A maintenance plan. The maintenance plan should be in accordance with State and local requirements, if any such requirements exist; (2) For discharges in special aquatic sites, including wetlands and submerged aquatic vegetation, the notification must include a delineation of affected areas; and (3) A compensatory mitigation proposal that offsets the loss of waters of the U.S.

NATIONWIDE PERMITS (continued)

43. *Stormwater Management Facilities.* (continued)

e. (3) Maintenance in constructed areas will not require mitigation provided such maintenance is accomplished in designated maintenance areas and not within compensatory mitigation areas (i.e., District Engineers may designate non-maintenance areas, normally at the downstream end of the stormwater management facility, in existing stormwater management facilities). (No mitigation will be required for activities which are exempt from Section 404 permit requirements);

f. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable, and the notification must include a written statement to the District Engineer detailing compliance with this condition (i.e., why the discharge must occur in waters of the U.S. and why additional minimization cannot be achieved);

g. The stormwater management facility must comply with General Condition 21 and be designed using best management practices (BMPs) and watershed protection techniques. Examples may include forebays (deeper areas at the upstream end of the stormwater management facility that would be maintained through excavation), vegetated buffers, and siting considerations to minimize adverse effects to aquatic resources. Another example of a BMP would be bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources from storm flows, especially downstream of the facility, that provide, to the maximum extent practicable, for long term aquatic resource protection and enhancement;

h. Maintenance excavation will be in accordance with an approved maintenance plan and will not exceed the original contours of the facility as approved and constructed; and

i. The discharge is part of a single and complete project (Section 404)

44. *Mining Activities.* Discharges of dredged or fill material into:

(i) Isolated waters, streams where the annual average flow is 1 cubic foot per second or less, and non-tidal wetlands adjacent to headwater streams, for aggregate mining (i.e., sand, gravel, and crushed and broken stone) and associated support activities;

(ii) Lower perennial streams, excluding wetlands adjacent to lower perennial streams, for aggregate mining activities (support activities in lower perennial streams or adjacent wetlands are not authorized by this permit); and/or

(iii) Isolated waters and non-tidal wetlands adjacent to headwater streams, for hard rock/mineral mining activities (i.e., extraction of metalliferous ores from subsurface locations) and associated support activities, provided the discharge meets the following criteria:

a. The mined area within waters of the U.S., plus the acreage loss of waters of the U.S. resulting from support activities, cannot exceed 1/2 acre;

b. The permittee must avoid and minimize discharges into waters of the U.S. at the project site to the maximum extent practicable, and the notification must include a written statement detailing compliance with this condition (i.e., why the discharge must occur in waters of the U.S. and why additional minimization cannot be achieved);

c. In addition to General Conditions 17 and 20, activities authorized by this permit must not substantially alter the sediment characteristics of areas of concentrated shellfish beds or fish spawning areas. Normally, the water quality management measures required by General Condition 9 should address these impacts;

d. The permittee must implement necessary measures to prevent increases in stream gradient and water velocities and to prevent adverse effects (e.g., head cutting, bank erosion) to upstream and downstream channel conditions;

e. Activities authorized by this permit must not result in adverse effects on the course, capacity, or condition of navigable waters of the U.S.;

f. The permittee must utilize measures to minimize downstream turbidity;

g. Wetland impacts must be compensated through mitigation approved by the Corps;

h. Beneficiation and mineral processing for hard rock/mineral mining activities may not occur within 200 feet of the ordinary high water mark of any open waterbody. Although the Corps does not regulate discharges from these activities, a Clean Water Act Section 402 permit may be required;

i. All activities authorized by this permit must comply with General Conditions 9 and 21. Further, the District Engineer may require water quality management measures to ensure the authorized work results in minimal adverse effects to water quality;

NATIONWIDE PERMITS (continued)

44. Mining Activities. (continued)

j. Except for aggregate mining activities in lower perennial streams, no aggregate mining can occur within streambeds where the average annual flow is greater than 1 cubic foot per second or in waters of the U.S. within 100 feet of the ordinary high water mark of headwater stream segments where the average annual flow of the stream is greater than 1 cubic foot per second (aggregate mining can occur in areas immediately adjacent to the ordinary high water mark of a stream where the average annual flow is 1 cubic foot per second or less);

k. Single and complete project: The discharge must be for a single and complete project, including support activities. Discharges of dredged or fill material into waters of the U.S. for multiple mining activities on several designated parcels of a single and complete mining operation can be authorized by this permit provided the 1/2 acre limit is not exceeded; and

l. Notification: The permittee must notify the District Engineer. The notification must include: (1) A description of waters of the U.S. adversely affected by the project; (2) A written statement to the District Engineer detailing compliance with paragraph (b), above (i.e., why the discharge must occur in waters of the U.S. and why additional minimization cannot be achieved); (3) A description of measures taken to ensure that the proposed work complies with paragraphs (c) through (f), above; and (4) A reclamation plan (for aggregate mining in isolated waters and non-tidal wetlands adjacent to headwaters and hard rock/mineral mining only).

This permit does not authorize hard rock/mineral mining, including placer mining, in streams. No hard rock/mineral mining can occur in waters of the U.S. within 100 feet of the ordinary high water mark of headwater streams. The terms "headwaters" and "isolated waters" are defined at 33 CFR 330.2(d) and (e), respectively. For the purposes of this permit, the term "lower perennial stream" is defined as follows: "A stream in which the gradient is low and water velocity is slow, there is no tidal influence, some water flows throughout the year, and the substrate consists mainly of sand and mud." (Sections 10 and 404)

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GENERAL CONDITIONS

The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

- 1. Navigation.** No activity may cause more than a minimal adverse effect on navigation.
- 2. Proper Maintenance.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
- 3. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow.
- 4. Aquatic Life Movements.** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
- 5. Equipment.** Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 6. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions which 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 or tribe in its Section 401 water quality certification.

The Corps has adopted the following Regional Conditions for the State of Wyoming:

- a. Endangered Species: Permittees must notify the Corps in accordance with General Condition No. 13 prior to undertaking any activities on non-federal lands in the following areas:
 1. Wetland areas adjacent to streams (including intermittent and ephemeral streams) in the following drainage basins in eastern Wyoming:
 - a. Antelope Creek;
 - b. Niobrara River;
 - c. North Platte River downstream of and including the La Prele Creek basin;
 - d. Laramie River downstream of Wheatland Reservoir No. 2
 - e. Horse Creek;
 - f. Lodgepole Creek;
 - g. Crow Creek;
 - h. Lone Tree Creek; and
 - i. Dale Creek.
 2. All areas in the Platte River Basin and Colorado River Basin when the activity would cause new water depletions or allow the continuation of historic water depletions. Water depletions include changes in timing of flows, evaporative losses, and consumptive uses. Construction and operation of projects such as reservoirs, diversion structures, water transmission pipelines, wells, and water treatment facilities usually result in water depletions.
 3. Within 1/2 mile of and including the Hutton Lake and Mortenson Lake National Wildlife Refuges and all sections in Township 15 North, Range 75 West, Albany County.
 4. Within 1 mile of an active bald eagle nest site.
 5. Wetlands adjacent to streams between 6,000 and 11,000 feet mean sea level in the Medicine Bow, Sierra Madre, Wind River, Gros Ventre, Salt River, Absaroka, and Bighorn mountain ranges.
 6. All of northwestern Wyoming west of the 13th Guide Meridian and north of the 9th Standard Parallel North.

GENERAL CONDITIONS (continued)

6. Regional and Case-By-Case Conditions. (continued)

b. Class 1 Waters: For nationwide permits 3, 5, 6, 7, 12, 13, 14, 18, 25, 29, 30, 32, 33, 36, 37, 39, 41, and 42 permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activities in Class 1 waters as defined below:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge;
3. The main stem of the Green River, including the Green River Lakes, from the mouth of the New Fork River upstream to the wilderness boundary;
4. The main stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
5. The main stem of the North Platte River from the Mouth of Sage Creek (approximately 15 miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortez Dam (Miracle Mile segment);
7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg Bridge) upstream to Alcova Reservoir;
8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service boundary;
11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
16. Fremont Lake; and
17. Wetlands adjacent to the above listed Class 1 waters.

c. Wind River Indian Reservation: For nationwide permits 3, 12, 13, 27, 39, 42, and 43, permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activities on Tribal lands within the Wind River Indian Reservation.

d. Notifications: For nationwide permits 16, 23, 27, 30, and 43, permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activities in all waters of the U.S.

e. Snake River: For all nationwide permits, except NWP 40, permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activities in the Snake River in Teton County.

f. Fens: For Nationwide Permits 3, 5, 20, and 32 permittees must notify the Corps in accordance with General Condition No. 13 prior to initiating any activities in fens. Nationwide permits 1, 2, 4, 6-19, 21-25, 28-30, 33-36, 39, 40(b-e), and 41-44 are revoked for use in fens. Wetlands commonly known as fens are defined as wetlands that are characterized by waterlogged spongy ground and contain (in all or in part) soils classified as histosols or mineral soils with a histic epipedon. To determine whether this provision applies, the entire wetland complex must be examined for the presence of histosols or histic epipedons.

g. Springs: All nationwide permits, except NWPs 3, 20, 31, 37, 38, and 40, are revoked for activities located within 100 feet of the water source in natural spring areas. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

GENERAL CONDITIONS (continued)

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

8. *Tribal Rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water Quality.* In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). For NWP 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

The Wyoming Department of Environmental Quality (WDEQ) is the agency responsible for issuing certifications for activities in Wyoming except for Tribal Lands on the Wind River Indian Reservation. The U.S. Environmental Protection Agency (EPA) is responsible for issuing certifications on Tribal lands in Wyoming. Copies of the water quality certifications issued by the WDEQ and the EPA are attached to this notice.

10. *Coastal Zone Management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see Section 330.4(d)).

11. *Endangered Species.* No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), the District Engineer may add species-specific regional endangered species conditions to the NWPs.

Authorization of any activity by a nationwide permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their website at <http://www.fws.gov/r9endspp/endspp.html>.

GENERAL CONDITIONS (continued)

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification. Where required by the terms of the nationwide permit, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity: (1) Until notified in writing by the District Engineer that the activity may proceed under the nationwide permit with any special conditions imposed by the District or Division Engineer; or (2) If notified in writing by the District or Division Engineer that an individual permit is required; or (3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the nationwide permit may be modified, suspended, or revoked only in accordance with procedure set forth in 33 CFR 330.5(d)(2).

Contents of Notification: See pages 26-27 of this notice for instructions on the content of a PCN.

District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the nationwide permit will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the nationwide permit and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the nationwide permit.

14. Compliance Certification. Every permittee who has received a nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will be forwarded by the Corps with the authorization letter and will include: (a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; (b) A statement that any required mitigation was completed in accordance with the permit conditions; and (c) The signature of the permittee certifying the completion of the work and mitigation.

GENERAL CONDITIONS (continued)

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/3 acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

a. The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring notification, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

d. Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4-acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2-acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

e. To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purpose. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

GENERAL CONDITIONS (continued)

19. *Mitigation.* (continued)

g. Compensatory mitigation proposals submitted with the notification may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

h. Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. *Spawning Areas.* Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

Spawning seasons for the most common fish species in Wyoming are listed below:

Rainbow and Cutthroat Trout - March 15 through July 31

Brown and Brook Trout - September 15 through November 30

Site specific information on spawning seasons and spawning areas may be obtained from Fisheries Supervisors in Wyoming Game and Fish Department Regional Offices.

21. *Management of Water Flows.* To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelization will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect water flows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restriction of its flow, shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S., or discharges of dredged or fill material.

23. *Waterfowl Breeding Areas.* Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. *Removal of Temporary Fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

GENERAL CONDITIONS (continued)

25. Designated Critical Resources Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

Except as noted below, discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the U.S. may be authorized in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

26. Fill Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

a. Discharges in Floodplain; Below Headwaters: Discharges of dredged or fill material into waters of the U.S. within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWP 44.

b. Discharges in Floodway; Above Headwaters: Discharges of dredged or fill material into waters of the U.S. within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWP 44.

c. The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12 months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date may be requested. This request must be submitted at least one month before the previously approved completion date.

Further Information

1. District Engineers have authority to determine if any activity complies with the terms and conditions of a NWP.
2. NWPs do not obviate the need to obtain other Federal, State, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

Contents adapted from Part II of the *Federal Register* (Volume 67, Number 10) published on January 15, 2002. Copies available upon request or by visiting the Wyoming Regulatory Office web site at <http://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm>.

PRECONSTRUCTION NOTIFICATIONS

The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used. The notification must be in writing and include the following information:

1. Name, address and telephone numbers of the prospective permittee (i.e. landowner or funding agency);
2. Location of the proposed project;
3. Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);
4. For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes. Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than 1/4-acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate. In order to avoid delays, the applicant may hire a qualified consultant to complete a delineation. A list of consultants with the ability to complete delineations is available.
5. For NWP 7, the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;
6. For NWP 14, The PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the U.S. and a statement describing how temporary losses of waters of the U.S. will be minimized to the maximum extent practicable;
7. For NWP 21, the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;
8. For NWP 27, the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;
9. For NWP 29, the PCN must also include:
 - (i) Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;
 - (ii) A statement that the single-family housing activity is for a personal residence of the permittee;
 - (iii) A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring 1/4-acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));
 - (iv) A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

PRECONSTRUCTION NOTIFICATIONS (continued)

10. For NWP 31, the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five year (or less) maintenance plan. In addition, the PCN must include all of the following: (i) Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased; (ii) A delineation of any affected special aquatic sites, including wetlands; and (iii) Location of the dredged material disposal site.

11. For NWP 33, the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

12. For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the U.S. were achieved on the project site;

13. For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the U.S. or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal, and waive the limitation on stream impacts in writing before the permittee may proceed;

14. For NWP 40, the PCN must include a compensatory mitigation proposal to offset losses of waters of the U.S. This NWP does not authorize the relocation of greater than 300 linear-feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent non-tidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

15. For NWP 43, the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the U.S. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

16. For NWP 44, the PCN must include a description of all waters of the U.S. adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the U.S., a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

17. For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

18. For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

PCNs for activities in the State of Wyoming must be sent to the following address:

U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Boulevard, Suite 210
Cheyenne, Wyoming 82009-4942

The Wyoming Regulatory Office can be contacted at (307) 772-2300 for questions concerning the PCN procedure.

DEFINITIONS

Best Management Practices (BMPs). BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development.

Compensatory Mitigation. For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Creation. The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement. Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

Ephemeral Stream. An ephemeral stream has flowing water only during and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Farm Tract. A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe. That portion of the 100-year floodplain outside of the floodway (often referred to as “floodway fringe”).

Floodway. The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

Independent Utility. A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent Stream. An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of Waters of the U.S. Waters of the U.S. that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the U.S. is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Impacts to ephemeral streams are not included in the linear foot measurement of loss of stream bed for the purpose of determining compliance with the linear foot limits of NWPs 39, 40, 42, and 43. Waters of the U.S. temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the U.S. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the U.S. or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

DEFINITIONS (continued)

Non-Tidal Wetland. A non-tidal wetland is a wetland (i.e., a water of the U.S.) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open Water. An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term “open water” includes rivers, streams, lakes, and ponds. For the purposes of the NWP, this term does not include ephemeral waters.

Perennial Stream. A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permanent Above-Grade Fill. A discharge of dredged or fill material into waters of the U.S., including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWPs 3, 25, 36, etc. are not included.

Preservation. The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration. Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

Riffle and Pool Complex. Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Single and Complete Project. The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the “single and complete project” (i.e., a single and complete crossing) will apply to each crossing of a separate water of the U.S. (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

Stormwater Management. Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater Management Facilities. Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream Bed. The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

DEFINITIONS (continued)

Stream Channelization. The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the U.S., despite the modifications to increase the rate of water flow.

Tidal Wetland. A tidal wetland is a wetland (i.e., water of the U.S.) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides.

Vegetated Buffer. A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to open-waters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement, or preservation of aquatic habitats to ensure that activities authorized by NFPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

Vegetated Shallows. Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody. A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.



The State
of Wyoming



Department of Environmental Quality

Jim Geringer, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMIN/OUTREACH (307) 777-7758 FAX 777-3610	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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March 14, 2002

Mr. Matt Bilodeau
US Army Corps of Engineers
Wyoming Regulatory Office
2232 Del Range Blvd., Suite 210
Cheyenne, WY 82009

RE: Section 401 Certification of Nationwide permits in Wyoming

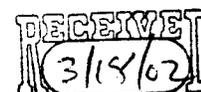
Dear Mr. Bilodeau:

In accordance with the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the proposed nationwide program and has made the following determinations:

In view of the current state water quality standards and regulations, we have found that some of the nationwide permits are acceptable as written, some require additional conditions to assure compliance with our standards and a few must be denied certification. There are also a number of nationwides for which we are waiving certification either because they do not involve discharges to waters of the state or have little or no applicability in Wyoming.

WAIVER OF 401 CERTIFICATION

Nationwide permits 1, 2, 4, 8, 9, 10, 11, 15, 19, 22, 24, 28, 34, and 35 are determined by this department to either not involve discharges or have little or no application in this state and, therefore, certification is waived.



DENIAL OF 401 CERTIFICATION - ALL WATERS

401 certification of the following nationwide permits is denied on all waters in the state:

- NWP 16** Return Water From Upland Contained Disposal Areas. Making water quality determinations on these return flows requires a site specific analysis. Very often these effluents will require a discharge permit from the State of Wyoming. The only way that proper state review can occur is by blanket denial of certification. Therefore, certification of NWP 16 is denied.
- NWP 17** Hydropower Projects. The Federal Energy Regulatory Commission does not have an office in the state, nor does this department have an MOU or any other agreement with FERC on permit processing. Because we have a poor understanding of their procedures and we are certain that they have little understanding of our standards and regulations, we cannot issue a blanket certification of FERC licensed activities. Therefore, certification of NWP 17 is denied.
- NWP 23** Approved Categorical Exclusions. This nationwide permit has been used almost exclusively on Federal Highway Administration projects and can be used to authorize activities which may have significant adverse affects on water quality. Furthermore, we believe that the proposed nationwide program coupled with existing regional general permits adequately covers most instances where use of this permit would be appropriate. Therefore, certification of NWP 23 is denied.
- NWP 27** Wetland and Riparian Restoration and Creation Activities. This nationwide permit authorizes a great variety of activities which are not limited by scale or size. Projects authorized may involve a considerable amount of construction in existing waterbodies. Though this NWP may provide a less burdensome permit process for wetland creation and restoration projects, it cannot provide assurance that these projects will be constructed in compliance with water quality standards. We believe that it is necessary to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.
- NWP 31** Maintenance of Existing Flood Control Facilities. This new nationwide permit may have significant effects on water quality depending upon the scale of the project and site specific circumstances. This is especially true when used for the dredging of detention basins where there may be an accumulation of toxic substances or nutrients. Because we are unsure of exactly how this permit may be applied, we believe it is prudent to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

- NWP 40** Farm Buildings. This NWP has never been used in Wyoming and we are not sure what its actual applicability is. We believe, however, that it is necessary to individually review each proposal to make an appropriate certification decision. Therefore, certification of NWP 40 is denied.
- NWP 43** Storm Water Management Facilities. This NWP may have significant effect on water quality depending on the scale and location of project. Depending on the source of storm water runoff, it is conceivable that significant concentrations of metals, turbidity, substances with high biological oxygen demand (BOD), oil and grease or other contaminants may be introduced into state waters. Because we are unsure of exactly what consequences to water quality may result from application of this permit, we believe it is prudent to evaluate each proposed project individually and add specific conditions relative to the protection of water quality. Therefore, certification of NWP 43 is denied.
- NWP 44** Mining Activities. This NWP authorizes aggregate and hard rock/mineral mining in and adjacent to specific water bodies. Beneficiation activities for hard rock/mineral mining are authorized within 200 feet of an "ordinary high water mark" : of any open water body. The activities authorized by this NWP may have considerable, deleterious effects on water quality. Because of the potential impacts to water quality, we believe that it is necessary to review each proposed activity and add any conditions necessary to protect water quality. Therefore, certification of NWP 44 is denied.

DENIAL OF CERTIFICATION ON CLASS 1 WATERS

Class 1 waters are defined by the state water quality regulations as those in which no further water quality degradation by point source discharges other than from dams will be allowed. Nonpoint source discharges will be controlled by the implementation of best management practices designed to maintain existing water quality. Because of the high level of protection afforded to these waters by the regulations, authorization of the activities covered by the above NWPs without individual departmental review is inappropriate.

Therefore, 401 certification for NWPs 3, 5, 6, 7, 12, 13, 14, 18, 25, 26, 29, 30, 32, 33, 36, 37, 39, 41, and 42 is denied on Wyoming Class 1 waters. These nationwide permits are certified for use on Wyoming class 2, 3, and 4 waters (*all other waters*) provided that the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

The following is a listing of current class 1 waters in Wyoming:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);
3. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;
4. The Main Stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
5. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortess Dam (Miracle Mile segment);
7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;
8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service Boundary;
11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;

16. Fremont Lake;
17. Wetlands adjacent to the above listed Class 1 waters.

APPROVED 401 CERTIFICATION

Nationwide permits 20, 21, and 38 are acceptable as written on all waters in the state so long as the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

ADDITIONAL CONDITIONS ON ALL NWPS.

Every authorization by the Corps for any activity which is not subject to an individual 401 certification must include the following language:

The Wyoming Department of Environmental Quality has certified that the use of this nationwide permit for the proposed activity is acceptable provided that all of the terms and conditions of the nationwide permit are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. This authorization in no way relieves any person from compliance with water quality standards or any other federal, state, or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.

The following conditions apply when operating equipment or otherwise undertaking construction in a water of the state:

- a. Construction equipment should not be operated below the existing water surface except as follows:

Fording the stream at one location is acceptable, however, vehicles and equipment should not push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or footing installations is acceptable to the extent that it does not create turbidity in excess of the Chapter 1 Surface Water Standards or unnecessary stream channel disturbance. Frequent fording should not occur in areas where extensive turbidity will be created. In all cold water fisheries and drinking water supplies (Classes 1, 2AB, 2A, and 2B) in stream activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs). In all warmwater or non-game fisheries (Classes 1, 2AB, 2A, 2B, and 2C) in stream activities associated with this permit shall not increase turbidity by more than 15 NTUs.

In accordance with Section 23(c)(2) of the Chapter 1 Surface Water Standards, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the numeric criteria in Section 23 (a) and (b) of the Standards in response to an individual application for a specific activity. An application must be submitted and a variance approved by the administrator before any temporary increase in turbidity above the numeric limits takes place.

- b. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction should be designed to handle high flows that could be anticipated during the construction period. All structures should be completely removed from the stream channel at the conclusion of construction and the area restored to a natural appearance.
- c. Care should be taken to cause only the minimum necessary disturbance. Streambank vegetation should be protected except where its removal is absolutely necessary for completion of the work.

Any vegetation, debris, or other material removed during construction must be disposed of at some location out of the stream channel or adjacent wetland areas where it cannot reenter the channel during high stream flow or runoff events.

All cut and fill slopes that will not be protected with riprap should be revegetated with appropriate species to prevent erosion.

- d. All fill material should be placed and compacted and subsequently protected from erosion. Areas to be filled should be cleared of all vegetation, debris and other materials that would be objectional to the fill.
- e. The period and timing of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning.
- f. Care must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water. A spill contingency should be developed for all projects where a large amount of petroleum products or solvents will be stored on the project site, and must be prepared when storage of these materials exceeds the federal limits.

The Wyoming Department of Environmental Quality certifies that these permits are acceptable as described above, provided the procedures described in the application for state certification are followed and reasonable care is taken to ensure that all disturbed areas are protected from erosion. The Department also reserves the right to amend, modify, suspend, or revoke this certification or any of its terms or conditions as may be appropriate or necessary to protect water quality and associated beneficial uses. The

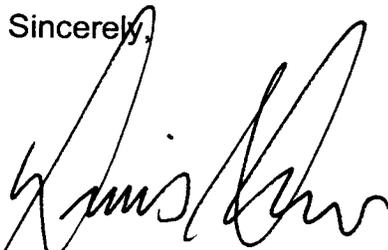
Mr. Bilodeau
March 14, 2002
Page 7

Corps should also be advised that the Wyoming surface water standards are currently being revised and substantial modifications are expected to be adopted by early 2001. Upon adoption of updated standards, this certification may be revoked and modified appropriately.

Please be aware that this letter constitutes state certification of this permit as required by Section 401 of the Federal Clean Water Act. It does not provide an exemption from any other federal, state, or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.

If you have any questions or would like to discuss any part of this certification, please feel free to contact Jeremy Lyon of my staff at (307) 777-7588.

Sincerely,



Dennis Hemmer
Director
Department of Environmental Quality

DH/GB/JL/bb/2-0897.ltr

cc: Tom Collins, Wyoming Game and Fish, Cheyenne
Rex Fletcher, EPA, Denver (8 EPR-EP), 999 18th Street, Suite 300, Denver, CO
80202
Michael Long, US FWS, Cheyenne, 4000 Morrie Avenue, Cheyenne, WY 82001
Mike Foster, LQD



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

MAR 13 2002

Ref: R8-0200010

Colonel Kurt F. Ubbelohde
District Engineer
Omaha District, Corps of Engineers
106 South 15th Street
Omaha, Nebraska 68102

Colonel Michael J. Conrad
District Engineer
Sacramento District, Corps of Engineers
1325 J. Street
Sacramento, CA 95814-2922

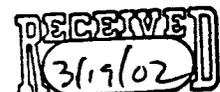
Major Gregory J. Guenter
Acting District Engineer
Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, New Mexico 87109-3435

RE: Certification of Nationwide Permits in
Indian Country Pursuant to Section 401
of the Clean Water Act

Dear Sirs:

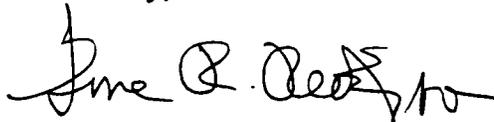
This letter is in response to the Corps' Final Notice of Issuance of Nationwide Permits (NWP) listed in the Tuesday, January 15, 2002, Federal Register for Section 401 water quality certification. This water quality certification applies only to Indian Country within Environmental Protection Agency (EPA) Region 8 where Tribes have not assumed the Clean Water Act (CWA) 303 Water Quality Standards Program. The EPA has not received final regional conditions from the Corps. Therefore, if the ensuing 401 certifications need to be modified due to the regional conditions, we will do so upon receipt.

Based on our review of the 2002 Final NWP, we have denied certification on all waters for three NWP (#21, #33 and #44), and conditionally certified other NWP. We are requesting that the Corps notify potential project applicants that applications requiring EPA 401 certification be sent to both the Tribes and EPA. We have provided the Tribal contacts to your field offices.



Your staff may contact Dave Ruiter (303-312-6794) of this office if there are questions concerning this certification.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard T. Claggett". The signature is fluid and cursive, with a large initial "R" and "C".

Richard T. Claggett, Chief
Wetlands and Watersheds Unit
Ecosystem Protection Program

Enclosure:

cc: State Water Quality Offices
Corps State Offices
Region VIII Tribes
Sadie Hoskie, Region 8

ENVIRONMENTAL PROTECTION AGENCY, REGION 8

**WATER QUALITY CERTIFICATION IN
ACCORDANCE WITH SECTION 401 OF THE CLEAN WATER ACT FOR
THE 2002 NATIONWIDE PERMITS IN INDIAN COUNTRY**

March 11, 2002

A. General Conditions for Nationwide Permits

1) Certification is denied for any activity affecting fens and springs.

Note: EPA adopts the definition of these aquatic resources as defined by the Corps in the 1999 Regional Conditions.

2) This certification does not authorize the placement or construction of septic/leach systems or other sewage treatment plants in wetlands.

3) This certification does not authorize construction of dams, except for stream restoration projects.

4) This certification does not authorize the construction of any portion of a facility for a confined animal feeding operation, including, but not limited to, the construction of buildings and sewage lagoons and/or livestock holding areas.

5) Wetland mitigation, including conversion of a forested wetland type to a herbaceous wetland, under these nationwide permits shall be completed prior to or concurrent with the project impacts.

6) For any general or specific nationwide permit conditions requiring notification in accordance with the notification general condition (i.e., Federal Register, Vol. 65, No. 47, Thursday, March 9, 2000, Part C.13 (e)), "Agency Coordination" for project activities shall include coordination with Native American Tribe or Tribes affected by such project activities.

7) This certification requires the use of certified weed-free hay with any revegetation of project areas for activities authorized under these nationwide permits.

8) This certification requires monitoring and control of invasive species after project completion pursuant to the Invasive Species Executive Order 13112.

9) This certification requires all equipment be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired prior to the equipment being allowed on the project. Leaks that occur after the equipment is moved to the project site will be fixed that same day or the next day or removed from the

project area. The equipment is not allowed to continue operating once the leak is discovered.

10) This certification does not authorize any unconfined discharge of liquid cement in waters of the U.S.. Grouting riprap must occur under dry conditions with no exposure of wet concrete to the stream/lake.

11) All discharges must occur during the low flow or no flow period of the season.

B. SPECIAL CONDITIONS FOR SPECIFIC NATIONWIDE PERMITS

The following conditions are specific to each listed nationwide permit:

Nationwide Permit 3. Maintenance Activities

1. This certification is denied for discharges of any fill or dredged material that would result in an increase in land contour height beyond the original dimensions for the repair of low water crossings.
2. Silt and sediment removal associated with low water crossings shall be limited to a maximum of 50 linear feet.
3. Silt and sediment removal associated with bridge crossings shall be limited to a maximum of 100 linear feet.

Nationwide Permit 7. Outfall Structures and Maintenance

For construction and maintenance activities:

1. Construction of the outfall structure shall be placed at the streambed elevation and, at a minimum, the pipeline should be oversized to prevent high pressure discharge of stormwater.
2. Certification is denied for construction of outfall structures in wetlands.
3. Controls shall be put in place to stabilize all areas of the bed and bank around and adjacent to the outfall structure and associated intake structures that may be affected by outfall or stream flows, respectively.
4. This certification does not authorize structures for drainage activities that result in a loss of waters of the U.S. (e.g. tile systems).

Nationwide permit 12. Utility Line Activities

1. Certification is denied for activities in perennial drainages and wetlands.

2. Certification is denied for all water intake structures.

For activities in ephemeral and intermittent drainages the following conditions apply:

1. Crossings must be placed as close to perpendicular to the water course as possible.
2. Affected streambanks must be sloped such that the stream bottom width is not reduced and bottom elevations are restored to original elevations. Disturbed stream banks must be reconfigured to mimic a stable, naturally vegetated, portion of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream. If a natural/native stream reach is not available within the adjacent 1 mile reach, other natural portions of the drainage can serve as a reference condition.

Nationwide Permit 13. Bank Stabilization

1. For this certification to be valid, the use of root wads, tree trunks, planting of live vegetation, proper bank sloping or a combination there of will be used as bank stabilization structures. Native plants shall be planted in all disturbed areas and artificial soil stabilizing material (e.g. mulch, matting, netting etc) shall be used to reduce soil erosion. These materials, to include all plants and plant seed shall be on site or scheduled for delivery prior to or upon completion of the earth moving activities. Sediment control measures shall be maintained in good working order at all times.

For the purpose of this condition “proper sloping” is defined as configuring the disturbed bank to mimic a stable portion of the same stream within ½ mile in either direction of the project and not reduce the bottom width of the stream.

2. If flow conditions dictate the use of hardened structures, only appropriately sized angular rock may be used. The use of soil cement, concrete, grouted riprap, etc. is not certified.

Nationwide Permit 14. Linear Transportation Crossings

1. Stormwater resulting from both the construction and operation of these authorized projects must be routed into constructed runoff water quality control systems (e.g. sediment basins, wet ponds, etc.) in order to eliminate sediment and other pollutants prior to entry of stormwater into waters of the United States.

2. Affected streambanks must be sloped such that the stream bottom width is not reduced and bottom elevations are restored to original elevations.

3. Crossings must be placed as close to perpendicular to the water course as possible.

4. The upland and riparian areas adjacent to all sides of the crossing must be revegetated

in all directions from the banks of the tributary with native vegetation that is common to the geographical area. Native plants shall be planted in all disturbed areas and artificial soil stabilizing material (e.g. mulch, matting, netting etc) shall be used to reduce soil erosion. These materials, to include all plants and plant seed, shall be on site prior to or upon completion of the earth moving activities.

Nationwide Permit 21. Surface Coal Mining Activities

Certification is denied.

Nationwide Permit 27. Stream and Wetland Restoration Activities

This certification does not allow conversion of one habitat type to another (e.g., wetlands to open water).

Nationwide Permit 33. Temporary Construction, Access and Dewatering

Certification is denied.

Nationwide Permit 37. Emergency Watershed Protection and Rehabilitation

1. In addition to the information specified in the general conditions 13(b) (Contents of Notification) the notification must include documentation that the work qualifies as an “exigency” situation and that immediate action will be taken if nationwide authorization is verified. Also, notification must include:

- a) a delineation of special aquatic sites;
- b) any spoil must be placed in an upland and controlled such that it cannot return to waters of the U.S.
- c) A delineation of riparian areas to be cleared and an analysis of alternatives to such clearing.

2. Certification is denied for discharges for which notification is submitted more than one year after the official conclusion of the emergency that caused the “exigency” situation.

Nationwide Permit 42. Recreation Facilities

1. Certification is denied for the construction of parking lots, golf course, golf course buildings, ponds and reservoirs, ski areas and ski infrastructures.
2. Certification is denied for discharges resulting in the loss of more than 100 linear feet of channel, streambank, and/or wetlands for a single and complete project.
3. Clearing of riparian corridors and wooded and scrub shrub areas must be limited to the minimum necessary for project construction. Clearing limits must be specified in the construction contract both on a drawing or map and in a narrative.

Nationwide Permit 43. Stormwater Management Facilities

Certification is denied for the construction of new stormwater management facilities.

Nationwide Permit 44. Mining Activities

Certification is denied.