



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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OFFICE OF  
ENVIRONMENTAL REVIEW  
AND ASSESSMENT

AUG 16 2017



Colonel Mark A. Gerald  
District Engineer  
U.S. Army Corps of Engineers  
Seattle District  
P.O. Box C-3755  
Seattle, Washington 98124-2255

Dear Colonel Gerald:

The U.S. Environmental Protection Agency has completed its review of the U.S. Army Corps of Engineers' Nationwide Permit Federal Rule, as published in the *Federal Register* (82 FR 1860) on January 6, 2017. On March 6, 2017, the EPA submitted the Clean Water Act Section 401 water quality certification decisions to the Seattle District.

On March 17, 2017, the U.S. Army Corps of Engineers Northwest Division notified the EPA that they considered certain aspects of the CWA Section 401 water quality certification as problematic and was effectively an "administrative denial." On March 28, 2017, we had a conference call with NW Division and District representatives to discuss the specific concerns and reached agreement on the proposed modifications to the language. The process agreed to was for the EPA to make revisions to the Seattle District's Certification, to receive NW Division concurrence on those changes, and then make the same changes where applicable to the Portland and Walla Walla Districts' Certifications. The EPA provided the draft revised changes to the NW Division and Seattle District on April 10, 2017. After several additional exchanges of information, we received final feedback from the Corps on July 5, 2017. This letter and the enclosure reflects the EPA's adoption of the final language changes requested by the Corps.

Pursuant to Section 401 of the CWA, the EPA certifies that there is reasonable assurance that the Department of the Army's modifications and additions to the Nationwide Permits at Appendix A to 33 CFR Part 330 will comply with applicable provisions of the CWA Sections 301, 302, 303, 306, and 307 in those areas where the EPA is the certifying authority within the State of Washington. The EPA is responsible for providing CWA Section 401 water quality certifications in Indian Country for Tribes who do not have treatment as a state and on lands with exclusive federal jurisdiction. In the State of Washington, the EPA has CWA Section 401 water quality certification authority for the nineteen Tribes listed on the copy line below.

This letter and enclosure constitute the final CWA Section 401 water quality certification for the reissuance of the 50 Nationwide Permits, their general conditions and definitions, and the two new Nationwide Permits 53 and 54. The EPA's decisions are based on the 2017 Nationwide Permits and National General Conditions, as published in the *Federal Register* on January 6, 2017, and the Seattle District's final Regional General Conditions and Permit-specific Regional Conditions, as published in the special public notice dated March 17, 2017. This certification applies to permit authorizations by the Corps, including the CWA Section 404 and Rivers and Harbors Act Section 10 activities, that may result

in a discharge of pollutants to waters of the U.S. where the EPA is the certifying authority.

The EPA denies CWA Section 401 water quality certification for the following Nationwide Permits:

**NWP 13 – Bank Stabilization**  
**NWP 14 – Linear Transportation Projects**  
**NWP 16 – Return Water from Upland Contained Disposal Areas**  
**NWP 17 – Hydropower Projects**  
**NWP 21 – Surface Coal Mining Activities**  
**NWP 29 – Residential Developments**  
**NWP 34 – Cranberry Production Activities**  
**NWP 37 – Emergency Watershed Protection and Rehabilitation**  
**NWP 39 – Commercial and Institutional Developments**  
**NWP 40 – Agricultural Activities**  
**NWP 42 – Recreational Facilities**  
**NWP 43 – Stormwater Management Facilities**  
**NWP 44 – Mining Activities**  
**NWP 46 – Discharges to Ditches and Canals**  
**NWP 48 – Commercial Shellfish Aquaculture Activities**  
**NWP 49 – Coal Remining Activities**  
**NWP 50 – Underground Coal Mining Activities**  
**NWP 52 – Water-Based Renewable Energy Generations Pilot Projects**  
**NWP 53 – Removal of Low-Head Dams**

The EPA partially denies CWA Section 401 water quality certification for the following Nationwide Permits. An individual CWA Section 401 certification is required for any project that is denied certification, as described below, and as provided in the enclosed Appendix 1, EPA General Conditions and Nationwide Permit-Specific Regional Water Quality Conditions.

**NWP 3 – Maintenance:** Maintenance or replacement activities in fish bearing waters of the U.S. that extend beyond their prior footprint, or activities that require excavation or dredging in open water, are denied certification.

**NWP 6 – Survey Activities:** Projects involving oil or natural gas exploration, or projects and/or activities involving trenching in waters of the U.S., are denied certification.

**NWP 7 – Outfall Structures and Associated Intake Structures:** Projects having an associated outfall to a special aquatic site (e.g., mud-flat, vegetated shallows, wetland), or could affect submerged aquatic vegetation or forage fish in marine waters, are denied certification.

**NWP 12 – Utility Line Activities:** Any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or where there are associated permanent access roads, temporary structures or fills, or projects authorized under one or more nationwide permit(s) that result in greater than a 1/10 acre of impacts to aquatic resources, or result in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or greater than 300 linear feet of stream, are denied certification.

**NWP 23 – Approved Categorical Exclusions:** Projects having more than 1/10 acre of impacts to aquatic resources or in excess of 300 linear feet of stream, are denied certification.

**NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement**

**Activities:** Projects that will affect greater than ½ acre of wetlands or 300 linear feet of fish bearing streams, or any activity in tidal wetlands or waters, are denied certification.

**NWP 31 – Maintenance of Existing Flood Control Facilities:** Levee maintenance involving native woody vegetation removal along salmon bearing waters resulting in a discharge of dredge or fill material in waters of the U.S., are denied certification.

**NWP 33 – Temporary Construction, Access and Dewatering:** Temporary fills left in place longer than 90 days are denied certification.

**NWP 36 – Boat Ramps:** Projects exceeding 20 feet in width, or which involve native tree or shrub removal resulting in a discharge of dredge or fill material in waters of the U.S., are denied certification.

**NWP 38 – Cleanup of Hazardous and Toxic Waste:** Projects not part of an EPA ordered cleanup are denied certification.

**NWP 41 – Reshaping Existing Drainage Ditches:** Projects in excess of 500 linear feet are denied certification.

**NWP 45 – Repair of Uplands Damaged by Discrete Events:** Projects greater than ½ acre or requiring restoration waterward of the pre-event ordinary high water mark are denied certification.

**NWP 51 – Land-Based Renewable Energy Generation Facilities:** Projects affecting greater than ½ acre of aquatic resources or 300 linear feet of stream are denied certification.

**NWP 54 – Living Shorelines:** Projects that are located within a special aquatic site (e.g., mudflat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish in marine waters, are denied certification.

The EPA certifies that the discharges authorized by the following remaining Nationwide Permits comply with the applicable provisions of the CWA, provided that the permittee complies with all conditions of the Nationwide Permits, the District's final regional conditions dated March 17, 2017 and the EPA water quality certification General Conditions, which must be included as enforceable conditions of the Nationwide Permits:

**NWP 1 – Aids to Navigation**

**NWP 2 – Structures in Artificial Canals**

**NWP 4 – Fish & Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**

**NWP 5 – Scientific Measurement Devices**

**NWP 8 – Oil and Gas Structures on the Outer Continental Shelf**

**NWP 9 – Structures in Fleeting and Anchorage Areas**

**NWP 10 – Mooring Buoys**

**NWP 11 – Temporary Recreational Structures**

**NWP 15 – U.S. Coast Guard Bridges**

**NWP 18 – Minor Discharges**

**NWP 19 – Minor Dredging**

**NWP 20 – Response Operations for Oil or Hazardous Substances**

**NWP 22 – Removal of Vessels**

**NWP 24 – Indian Tribe or State Administered Section 404 Programs**

**NWP 25 – Structural Discharges**



**NWP 28 – Modifications of Existing Marinas**  
**NWP 30 – Moist Soil Management for Wildlife**  
**NWP 32 – Completed Enforcement Actions**  
**NWP 35 – Maintenance Dredging of Existing Basins**

The EPA is notifying the Tribes within the State of Washington for whom the EPA has authority to issue CWA Section 401 water quality certifications of these final conditions by copy of this letter. We are also providing a courtesy copy to the Tribes with their own CWA Section 401 water quality certification authority.

I appreciate the collaboration and assistance by your staff throughout the water quality certification process for the Nationwide Permits. Please do not hesitate to contact Ms. Linda Storm, Aquatic Ecologist of my staff, at 206-553-6384 or [storm.linda@epa.gov](mailto:storm.linda@epa.gov) for any questions regarding the CWA Section 401 water quality certifications of the Nationwide Permits.

Sincerely,



R. David Allnutt, Director  
Office of Environmental Review and Assessment

Enclosure

cc (via electronic mail):

Ms. Michelle Walker, U.S. Army Corps of Engineers  
Mr. Matt Bennett, U.S. Army Corps of Engineers  
Mr. Andrew Shuckhart, U.S. Army Corps of Engineers  
Ms. Kim Kratz, National Marine Fisheries Service  
Mr. David Hirsh, National Marine Fisheries Service  
Mr. Curtis Tanner, U.S. Fish and Wildlife Service  
Mr. Ryan Lewis, U.S. Fish and Wildlife Service  
Ms. Loree' Randall, Washington Department of Ecology  
Ms. Jessica Housley, Washington Department of Ecology  
Mr. David Palazzi, Washington Department of Natural Resources  
Ms. Lalena Amiotte, Washington Department of Natural Resources  
Mr. Randi Thurston, Washington Department of Fish and Wildlife  
Mr. Gary Passmore, Confederated Tribes of the Colville Reservation  
Mr. Rudy Salakory, Cowlitz Indian Tribe  
Mr. Warren Scarlet, Hoh Indian Tribe  
Ms. Hansi Hals, Jamestown S'Klallam Tribe  
Mr. Matt Beirne, Lower Elwha Klallam Tribe  
Ms. Karen Walter, Muckleshoot Indian Tribe  
Mr. Curtis Stanley, Nisqually Indian Tribe  
Mr. Oliver Grah, Nooksack Indian Tribe  
Ms. Katie Krueger, Quileute Nation  
Mr. Daniel Ravenel, Quinault Indian Nation  
Ms. Christine Woodward, Samish Indian Nation

Mr. Scott Morris, Sauk-Suiattle Indian Tribe  
Mr. Steve Spencer, Shoalwater Bay Tribe  
Ms. Cindy Spiry, Snoqualmie Tribe  
Ms. Erica Marbet, Squaxin Island Tribe  
Ms. Jody Brown, Stillaguamish Bay Tribe  
Ms. Dee Williams, Suquamish Tribe  
Ms. Lauren Rich, Upper Skagit Indian Tribe  
Ms. Elizabeth Sanchey, Yakama Nation

## Appendix 1

### **U.S. Environmental Protection Agency's Water Quality Conditions for the 2017 U.S. Army Corps of Engineers Nationwide Permits on Tribal Lands without Treatment as a State and Lands with Exclusive Federal Jurisdiction in Washington**

In addition to all the U.S. Army Corps of Engineers' National and Seattle District's Regional permit conditions, the following EPA Section 401 water quality certification General Conditions apply to all Nationwide Permits, whether certified or partially certified with conditions.

#### **EPA GENERAL CONDITIONS:**

##### **EPA General Condition 1 – Special Aquatic Sites**

Any activities in the following types waters of the United States, including wetlands, require an individual 401 certification: Mature forested wetlands; bogs; peatlands; wetlands in dunal systems along the Washington coast; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; salt marshes; or marine waters with eelgrass or kelp beds.

##### **EPA General Condition 2 – Soil Erosion and Sediment Controls**

A 401 certification determination is based on the project or activity meeting established turbidity levels. The EPA will use as guidance, the State of Washington's water quality standards [WAC 173-201A] and sediment quality standards [WAC 173-204], to determine if standards are exceeded. Projects or activities that are expected to exceed these levels will require an individual 401 certification, as determined by EPA.

Washington's water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices (BMPs) have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

<b>For Fresh Water [WAC 173-201A-200 (1)(e)]</b>	
<b>Stream Flows at the time of construction</b>	<b>Downstream Point of Compliance for Temporary Area of Mixing</b>
Waters with flows up to 10 cubic feet/second (cfs)	100 feet downstream of activity causing turbidity exceedance
Waters with flows above 10 cfs up to 100 cfs	200 feet downstream of activity causing turbidity exceedance
Waters with flows above 100 cfs	300 feet downstream of activity causing turbidity exceedance
Work in waters within or along lakes, ponds, wetlands, reservoirs or other non-flowing waters	Radius of 150 feet or the maximum surface dimension (whichever is less)

<b>For Marine Water [WAC 173-201A-</b>	<b>Point of Compliance for Temporary</b>
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<b>210 (1)(e)]</b>	<b>Area of Mixing</b>
Estuaries or Marine Waters	Radius of 150 feet from the activity causing the turbidity exceedance

**EPA General Condition 3 – Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions**

All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the U.S.

- a. For land disturbances during construction, the permittee must obtain and implement Construction Stormwater General Permit requirements where required [<https://www.epa.gov/npdes/stormwater-discharges-construction-activities>]
- b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided.

The EPA encourages prevention of discharges by managing stormwater on site through Low Impact Development principles and other prevention techniques. The EPA will use the Washington State Department of Ecology's most recent stormwater management and design manuals as guidance for individual 401 water quality certification conditions [see <http://www.ecy.wa.gov/programs/wq/stormwater/index.html>]

**EPA General Condition 4 – Compliance with Requirements of the National Pollutant Discharge Elimination System Permit for Industrial or Municipal Activities**

For projects and activities requiring coverage under an industrial or municipal (non-stormwater) NPDES permit, certification is based on compliance with the requirements of that permit. The EPA will determine if the project is compliant. The projects and activities not in compliance with NPDES requirements will require an individual 401 certification, as determined by EPA.

**EPA General Condition 5 – Projects or Activities Discharging to Impaired Waters**

An individual 401 certification is required for projects or activities authorized under the Nationwide Permits (NWP) if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) *and* the discharge may result in further exceedance of a specific parameter for which the waterbody is listed. The EPA will determine if the discharge results in an exceedance of a specific parameter. The current list of 303(d)-listed waterbodies in Washington State is available at: <http://www.ecy.wa.gov/programs/wq/303d/index.html>.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved Total Maximum Daily Load, the permittee must provide documentation for EPA approval showing that the discharge is within the established limits of the TMDL. Locating a proposed project within a watershed with a TMDL can be done at: on EPA's web site <https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved TMDL or an approved water quality management plan, the permittee must provide documentation for EPA approval demonstrating that the discharge will not result in further exceedance of the listed contaminant or impairment.

The EPA may issue an individual 401 certification for projects or activities that would result in further exceedance or impairment if mitigation is provided that would result in a net decrease in listed pollutants or less impairment in the waterbody. This determination would be made during individual 401 certification review.

#### **EPA General Condition 6 – Notification and 401 Water Quality Certification Application**

For projects requiring an individual 401 certification, permittees must provide the EPA with the same documentation provided to the Corps (as described in Corps' National General Condition 32, Pre-Construction Notification), including, when applicable:

- a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.
- b. Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps. Eelgrass delineation must be prepared in accordance with current methods recommended by the Corps.
- c. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.
- d. Other applicable requirements of the Corps' National General Condition 32, Regional Conditions, or notification conditions of the applicable NWP.

A request and application for an individual 401 certification is not complete until the EPA is provided the applicable documents noted above and the EPA has received a copy of the Corps' verification letter stating the applicant must contact EPA to obtain a 401 water quality certification.

#### **EPA General Condition 7 – Mitigation**

An individual 401 certification is based on adequate compensatory mitigation being provided for unavoidable impacts to aquatic resources and other water quality-related impacts of projects or activities authorized under the NWP Program.

A 401 certification is contingent upon written approval from the EPA of the compensatory mitigation plan for projects and activities that result in any of the following:

- a. Impacts to any aquatic resources requiring special protection (as defined in EPA General Condition 1)
- b. Any impacts to tidal waters or non-tidal waters adjacent to tidal waters, or
- c. any impacts to aquatic resources greater than 1/10 acre.

Compensatory mitigation plans submitted to the EPA must be based on the requirements established in the 2008 Compensatory Mitigation For Losses of Aquatic Resources Federal Rule (<https://www.epa.gov/sites/production/files/2015->



03/documents/2008\_04\_10\_wetlands\_wetlands\_mitigation\_final\_rule\_4\_10\_08.pdf) and follow the guidance in *Wetland Mitigation in Washington State, Parts 1 and 2* (Ecology Publications #06-06-011a and #06-06-011b or as updated) and must include, at a minimum, the following:

- 1) A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
- 2) The nature of the proposed impacts (e.g., acreage of wetlands and functions lost or degraded).
- 3) The rationale for the mitigation site that was selected.
- 4) The ecological goals and objectives of the compensatory mitigation project.
- 5) How the mitigation project will be accomplished (work plan), including proposed performance standards for measuring success (e.g., vegetation success criteria and performance standards, hydrology and/or hydrologic regime standards, etc), and the proposed buffer widths.
- 6) How the site will be maintained and monitored through time to assess progress towards goals and objectives.
- 7) Submittal of an “as-built conditions report” upon completion of grading, planting and hydrology establishment at the mitigation site.
- 8) Submittal of monitoring reports at agreed upon intervals showing the results of monitoring to meet performance standards and criteria. For forested and scrub-shrub wetlands, 10 years of monitoring will often be necessary.
- 9) Legal site protection mechanism (conservation easement or restrictive covenant) to ensure that the compensatory mitigation site will be legally protected for the long-term.
- 10) Long term management and maintenance plan.
- 11) Financial assurances.

#### **EPA General Condition 8 – Temporary Fills**

An individual 401 certification is required for any activity where temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90-day period begins when filling activity starts in the wetland or other waterbody.

#### **EPA General Condition 9 – Designated Critical Resource Waters**

An individual 401 certification is required for any proposed project or activity in waterbodies on the most current list of Designated Critical Resource Waters (per the Corps’ National General Condition 22).

#### **EPA General Condition 10 – Fills Within 100-Year Floodplains**

An individual 401 certification is required for any proposed project or activity that involves fill in waters of the U.S. and would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

[*Note:* The 100-year floodplain is defined as those areas identified as Zones A, A1-30, AE, AH, AO, A99, V, V1-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100-year recurrence interval, or as the flood with an exceedance probability of 0.01.]

### **EPA General Condition 11 – Chemically Treated Wood**

An individual 401 water quality certification is required if the permittee proposes to use wood products treated with biologically harmful leachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), unless the wood products meet the following conditions:

- a. Wood preservatives and their application must be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act,
- b. Use of chemically treated wood products must follow the Western Wood Preservatives Institute (WWPI) guidelines and best management practices to minimize the preservative migrating from treated wood into the aquatic environment (see: <http://preservedwood.org/HowTo/BestManagementPractices.aspx>)
- c. For new or replacement wood structures, the wood must be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood are encouraged and include untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and
- d. All removal of chemically treated wood products (including pilings) must follow the most recent “EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State.”

## **EPA NWP-SPECIFIC WATER QUALITY CONDITIONS**

### **1. Aids to Navigation.**

**EPA 401 Certification – Certified**

### **2. Structures in Artificial Canals.**

**EPA 401 Certification – Certified**

### **3. Maintenance.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- Activities occur in fish bearing waters of the U.S. that extend beyond their prior footprint,
- or
- Activities require excavation or dredging in open water.

### **4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.**

**EPA 401 Certification – Certified**

### **5. Scientific Measurement Devices.**

**EPA 401 Certification – Certified**

### **6. Survey Activities.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activity involves oil or natural gas exploration, or
- The project or activity requires trenching in waters of the U.S.

**7. Outfall Structures and Associated Intake Structures.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The projects have an associated outfall to a special aquatic site (e.g., mud-flat, vegetated shallows, wetland), or
- The project or activities could affect submerged aquatic vegetation in marine waters or forage fish.

**8. Oil and Gas Structures on the Outer Continental Shelf.**

**EPA 401 Certification – Certified**

**9. Structures in Fleeting and Anchorage Areas.**

**EPA 401 Certification – Certified**

**10. Mooring Buoys.**

**EPA 401 Certification – Certified**

**11. Temporary Recreational Structures.**

**EPA 401 Certification – Certified**

**12. Utility Line Activities.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- Any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or
- There are any permanent access roads, temporary structures or fill associated with the utility line activities, or
- The project is authorized under one or more nationwide permit that result(s) in greater than 1/10 acre of impacts to aquatic resources, results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or greater than 300 linear feet of stream.

**13. Bank Stabilization.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**14. Linear Transportation Projects.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**15. U.S. Coast Guard Approved Bridges.**  
**EPA 401 Certification – Certified**

**16. Return Water from Upland Contained Disposal Areas.**  
**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**17. Hydropower Projects.**  
**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**18. Minor Discharges.**  
**EPA 401 Certification – Certified**

**19. Minor Dredging.**  
**EPA 401 Certification – Certified**

**20. Response Operations for Oil or Hazardous Substances.**  
**EPA 401 Certification – Certified**

**21. Surface Coal Mining Operations.**  
**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**22. Removal of Vessels.**  
**EPA 401 Certification – Certified**

**23. Approved Categorical Exclusions.**  
**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activities involve greater than 1/10 acre of impacts to aquatic resources, or greater than 300 linear feet of stream.

**24. Indian Tribe or State Administered Section 404 Programs.**  
**EPA 401 Certification – Certified**

**25. Structural Discharges.**  
**EPA 401 Certification – Certified**

**26. [Reserved]**

**27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities**  
**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activities impact greater than ½ acre of wetlands or 300 linear feet of fish bearing stream, or
- Any activity in tidal wetlands or waters.

**28. Modifications of Existing Marinas.**

**EPA 401 Certification – Certified**

**29. Residential Developments.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**30. Moist Soil Management for Wildlife.**

**EPA 401 Certification – Certified**

**31. Maintenance of Existing Flood Control Facilities.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities in waters of the U.S. authorized under this NWP if:

- Levee maintenance activities involve native woody vegetation removal resulting in a discharge of dredge or fill material along salmon bearing streams or rivers.

**32. Completed Enforcement Actions.**

**EPA 401 Certification – Certified**

**33. Temporary Construction, Access, and Dewatering.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activity has temporary fills left in place for more than 90 days. The 90-day period begins when fill material is initially placed in wetlands or other waters of the U.S.

**34. Cranberry Production Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**35. Maintenance Dredging of Existing Basins.**

**EPA 401 Certification – Certified**

**36. Boat Ramps.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activities exceed 20 feet in width, or the project or activities result in shoreline native tree or shrub removal resulting in discharges of dredge or fill material in waters of the U.S.



**37. Emergency Watershed Protection and Rehabilitation.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**38. Cleanup of Hazardous and Toxic Waste.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activities are not part of an EPA ordered cleanup.

**39. Commercial and Institutional Developments.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**40. Agricultural Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**41. Reshaping Existing Drainage Ditches.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The scope of project is greater than 500 linear feet.

**42. Recreational Facilities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**43. Stormwater Management Facilities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**44. Mining Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**45. Repair of Uplands Damaged by Discrete Events.**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activity is greater than ½ acre, or
- The project or activity requires restoration waterward of the pre-event High Tide Line or

Ordinary High Water Mark before the event occurred.

**46. Discharges in Ditches.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**47. [Reserved].**

**48. Commercial Shellfish Aquaculture Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**49. Coal Remining Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**50. Underground Coal Mining Activities.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**51. Land-Based Renewable Energy Generation Facilities**

**EPA 401 Certification – Conditioned**

An individual certification is required for activities authorized under this NWP if:

- The project or activity affects greater than 1/2 acre of aquatic resources or 300 linear feet of stream.

**52. Water-Based Renewable Energy Generation Pilot Projects.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**53. Low-Head Dam Removal.**

**EPA 401 Certification – Denied**

An individual 401 certification is required for all projects.

**54. Living Shorelines.**

**EPA 401 Certification – Conditioned**

An individual 401 certification is required if the project is located within a special aquatic site (e.g., mudflat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish.