



BILL RICHARDSON
GOVERNOR

State of New Mexico
ENVIRONMENT DEPARTMENT

Surface Water Quality Bureau
Harold Runnels Building Room N2050
1190 St. Francis Drive - Zip 87505
P.O. Box 26110 - Zip 87502-6110

Santa Fe, New Mexico
Telephone (505) 827-0187
Fax (505) 827-0160

www.nmenv.state.nm.us



RON CURRY
SECRETARY

CINDY PADILLA
DEPUTY SECRETARY

CERTIFIED MAIL

March 29, 2007

Mr. Donald Borda
U.S. Army Corps of Engineers
Albuquerque District, Regulatory Branch
4101 Jefferson Plaza NE
Albuquerque, New Mexico 87109-3434

Subject: Clean Water Act Section 401 Water Quality Certification for the United States Army Corps of Engineers 2007 Nationwide Permits in Ephemeral Streams and Denial of Water Quality Certification in Intermittent, Perennial and Wetland Surface Water, and Outstanding National Resource Waters (ONRW)

Dear Mr. Borda:

The Surface Water Quality Bureau (SWQB) of the New Mexico Environment Department has examined the final notice of the Reissuance of Nationwide Permits (NWP) under Section 404 of the federal Clean Water Act by the Department of Defense, Department of the Army, Corps of Engineers (U.S. Army Corps of Engineers (USACE)) in Part II of the Federal Register (Vol. 72, No. 47, pp 11092-11198) published on March 12, 2007. Additional Regional Conditions for New Mexico are anticipated from the USACE Albuquerque District.

A state Water Quality Certification is required by Section 401 of the federal Clean Water Act to ensure that the NWP are consistent with state law, comply with the state Water Quality Standards (State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC) amendments through February 16, 2006), and implement the Water Quality Management Plan, including Total Maximum Daily Loads (TMDLs), the Continuing Planning Process, and Antidegradation Policy Implementation Plan. A Section 401 Water Quality Certification is also required to comply with General Condition 21 (Water Quality) and General Condition 23 (Regional and Case-By-Case Conditions) of the NWP.

Denial of Section 401 Certification of NWP for Discharges to Intermittent, Perennial, and Wetland Surface Water, and Outstanding National Resource Waters (ONRW):

Under authority of the New Mexico Water Quality Act (Chapter 74, Article 6 NMSA 1978, et. seq.) and pursuant to Section 401 of the federal Clean Water Act and 40 Code of Federal Regulations (CFR) Part 121, the SWQB hereby denies Section 401 certification of discharges to intermittent, perennial and wetland surface water defined in 20.6.4.7 NMAC, and Outstanding National Resource Waters (ONRW) designated in 20.6.4.9 NMAC that are regulated by Nationwide Permits.

The SWQB is not reasonably ensured that NWP project activities in intermittent, perennial and wetland surface water, and ONRWs will meet the state Water Quality Standards, implement the Water Quality Management Plan, protect existing water quality as described in the Antidegradation Policy Implementation Plan, or comply with applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the federal Clean Water Act.

In accordance with General Condition 21 of the Nationwide Permits, a project-specific Section 401 Water Quality Certification must be obtained (see 33 CFR 330.4(c)) for discharges to any intermittent, perennial and wetland surface waters and to any ONRW prior to construction. The SWQB requires a complete application and USACE permit verification prior to commencing the water quality certification review.

Conditional Section 401 Certification of NWPs for Discharges to Ephemeral Surface Water:

Under authority of the New Mexico Water Quality Act (Chapter 74, Article 6 NMSA 1978, et. seq.) and pursuant to Section 401 of the federal Clean Water Act and 40 Code of Federal Regulations (CFR) Part 121, the SWQB hereby issues a conditional Section 401 Water Quality Certification for discharges that are regulated by NWPs to ephemeral surface waters.

This certification is subject to conditions to reasonably ensure that the activity will be conducted in a manner that will not violate applicable state Water Quality Standards and Water Quality Management Plan, including the Antidegradation Policy Implementation Plan. **Therefore, this Certification is not valid unless the following conditions are adhered to:**

1. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or diversion of the stream from its natural channel.
2. The project must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity after completion except for projects specifically designed to restore previously degraded and unstable streams.
3. Erosion control measures for all portions of the project area that drain to or would have runoff toward surface water must be properly selected, installed, inspected, repaired and maintained. Erosion and sediment control structures (e.g., silt fences, sediment basins, etc.) must be inspected after significant storm events and repaired as necessary. Sediment must be removed from erosion control structures when the sediment reaches one half the height of the structure or the wet storage volume is reduced by one half.
4. Fuel, oil, hydraulic fluid, lubricants and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system to prevent spills. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during construction.
5. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water. Heavy equipment must not be parked within the stream channel.
6. Work in the stream channel must be limited to periods of no flow. Avoid working within the channel during spring runoff season or summer thunderstorm flows. Local weather forecasts must be monitored to avoid working in flow or high water. Work may occur during low flow as required, such as for emergencies, subject to prior approval by the SWQB. Heavy equipment must be operated from

the bank, when practicable. The SWQB must be notified and provided descriptions of temporary diversion structures and any other planned methods to avoid or minimize turbidity and to avoid spills. Comments from the SWQB must be incorporated into the work plan prior to construction.

7. Temporary diversion structures must be non-erodible, such as sand bags, water bladders, concrete barriers or channel lined with geotextile or plastic sheeting. Dirt cofferdams are not acceptable diversion structures. Diversion structures must be capable of carrying anticipated stream flows during the construction period. All man-made materials must be removed from the diversion channel and water returned to the original channel in a manner that avoids or minimizes turbidity. Temporary diversion channels must be backfilled in a manner that prevents erosion and diversion of the stream from its natural channel.
8. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind cofferdams to prevent releases to surface water or ground water. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle wash-down, or aggregate processing entering the watercourse. Dumping of waste materials near watercourses is strictly prohibited.
9. During demolition, treatments, or cleaning activities of bridges or associated structures (e.g., deck, pier, abutment and wing walls), materials must be kept out of the channel. Before removing bridge or related structures, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured above the water, under the bridge, and on the banks to capture any debris that may fall into the stream channel. Sandblasting operations must include vacuum systems or the bridge and associated structures must be completely “bagged” to collect all lead paint and concrete debris. Any debris that falls onto the containment area or into the channel must be properly disposed in accordance with the NM Solid Waste Regulations (20.9.1 NMAC). Applicable Material Safety Data Sheets of water repellants and surface finish treatments must be maintained at the project area to assist the SWQB in monitoring or inspections, if needed.
10. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil. All areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, must be restored to pre-project elevations and replanted with native vegetation and/or physically protected from erosion. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of first full growing season following construction.
11. A copy of this Section 401 Water Quality Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.
12. The SWQB must be notified at least five days before starting construction to allow time to schedule monitoring or inspections.
13. Report all spills immediately to the NMED as required by the New Mexico Water Quality Control Commission regulations (20.6.2.1203 NMAC). For non-emergencies during normal business hours, call 505-428-2500. For non-emergencies after hours, call 866-428-6535 or 505-428-6535 (voice mail, twenty-four hours a day). For emergencies only, call 505-827-9329 twenty-four hours a day (NM Department of Public Safety).

Violations of state Water Quality Standards could lead to penalties under the New Mexico Water Quality Act. Section 74-6-10.1 B of the Act states, “Any person who violates any provision of the Water Quality Act [Chapter 74, Article 6 NMSA 1978] other than Section 74-6-5 NMSA 1978 or any person who

violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars (\$10,000) per day for each violation.”

The SWQB reserves the right to amend or revoke this conditional Section 401 Certification of the Nationwide Permits if necessary to ensure compliance with the state Water Quality Standards. If you need further information please feel free to contact the SWQB at (505) 827-0187 or one of my staff listed below. Thank you.

Sincerely,



Marcy Leavitt, Chief
Surface Water Quality Bureau

ML:cc, cc, dm, ns, et

xc: Chris Canavan, NMED SWQB, Las Cruces (505) 647-7926
Chris Cudia, NMED SWQB, Las Vegas, (505) 454-2810
Dave Menzie, NMED SWQB, Silver City, (505) 388-0599
Neal Schaeffer, NMED SWQB, Santa Fe, (505) 476-3017
Erin Trujillo, NMED SWQB, Santa Fe, (505) 827-0418
Tom Nystrom, USEPA, Region 6
Lisa Kirkpatrick, NM Department of Game and Fish
Brian Millsap, U.S. Fish and Wildlife Service