



**US Army Corps
of Engineers®**
St. Paul District

PUBLIC NOTICE

2017 NATIONWIDE PERMITS Date: May 2, 2017

FINAL REGIONAL CONDITIONS, WATER QUALITY CERTIFICATION AND COASTAL ZONE CONCURRENCE FOR NATIONWIDE PERMITS IN THE STATES OF MINNESOTA AND WISCONSIN

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published a notice in the *Federal Register* (82 FR 1860) announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions.

After the publication of the Federal Register notice, the St. Paul District assessed which NWPs will be issued in the district and which will be revoked, and began finalizing its regional conditions. The St. Paul District determined to regionally issue 42 of those NWPs and revoke 10 of the NWPs. A list of NWPs available in Minnesota and Wisconsin is below. The St. Paul District began using the 2017 NWPs on April 24, 2017. The 2017 NWPs will expire on March 18, 2022.

NWPs will largely replace regional general permits to authorize activities in waters with no more than minimal adverse effects in the St. Paul District. Three public notices dated April 25, 2017, clarify what regional general permit categories of RGP-003-MN, RGP-002-WI, RGP-004-WI the District has suspended, and what categories are proposed to be modified or revoked in Minnesota and Wisconsin. Activities in waters associated with linear utility projects and linear transportation projects will continue to be authorized using current regional general permits or through an individual permit process.

Regional conditions provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will also help ensure protection of high value waters within the St. Paul District. On March 16, 2017, the Mississippi Valley Division Engineer approved regional conditions for the NWPs in Minnesota and Wisconsin, including within the exterior boundaries of federally recognized Indian reservations. Of the 30 regional conditions, 23 apply to all activities authorized by the NWPs and seven apply to specific NWPs. The regional conditions for the NWPs are included in this notice and are available at the web page listed below. These regional conditions and the conditions discussed below were effective as of April 24, 2017.

All activities authorized by the NWPs under Section 404 of the Clean Water Act require 401 Water Quality Certification (WQC) from the applicable state agency, tribe or the United States Environmental Protection Agency (EPA). For each NWP, the applicable agency or tribe may issue the WQC with no conditions, issue the WQC with conditions, deny the WQC, or waive the WQC. Below is a discussion of the status of all WQC decisions by responsible agencies and tribes:

The Minnesota Pollution Control Agency, Grand Portage Band of Lake Superior Chippewa, and Fond du Lac Band of Lake Superior Chippewa have issued conditional WQC for Section 404 NWP activities in Minnesota. Those agencies or tribes have also denied without prejudice WQC for some NWP activities or activities in certain aquatic resources. The Sokaogon Chippewa Community in Wisconsin has issued WQC for NWPs 20, 37 and 38 and has denied without prejudice WQC for all other Section 404 NWP activities.

The Lac du Flambeau Band of Lake Superior Chippewa Indians has denied without prejudice, all NWP activities on their reservation.

The EPA has denied without prejudice 401 WQC for all NWP activities on the Red Cliff Tribe of Lake Superior Chippewa’s reservation.

For all other NWP activities occurring in Indian Country within the states of Minnesota and Wisconsin, with the exception of the reservations previously discussed, the EPA has issued WQC.¹ These reservations include: Bois Forte Band of Chippewa, Mille Lacs Band of Chippewa, Prairie Island Community, Red Lake Band of Chippewa, Leech Lake Band of Ojibwe, Shakopee Mdewakanton Sioux Community, Upper Sioux Community, Lower Sioux Community, White Earth Band of Chippewa, Minnesota Chippewa Tribe, Forest Country Potawatomi Community, Ho-Chunk Nation, Lac Courte Oreilles Band of Ojibwe, Menominee Indian Tribe of Wisconsin, Oneida Tribe of Wisconsin, St. Croix Chippewa Indians of Wisconsin and the Stockbridge-Munsee Community.

The St. Paul District has determined that the WQC conditions received from the Wisconsin Department of Natural Resources (DNR) are not enforceable by the Corps and are therefore considered denied without prejudice. If the status of the Wisconsin DNR WQC changes, as is expected, a new public notice will be issued describing the change.

For all instances where WQC has been denied by a water quality certifying agency or tribe, applicants must receive an individual WQC decision from the State, EPA or Tribe before activities authorized by a NWP can commence. Contact information for all 401 certifying agencies and tribes is available on the website listed below.

401 Water Quality Certification Summary Table

Location	Status	Additional 401 WQC needed from agency/tribe?
State of Minnesota	Certified, with conditions	No, unless conditions are <i>not</i> followed.
Grand Portage Reservation	Certified, with conditions	No, unless conditions are <i>not</i> followed. Tribal notification required.
Fond du Lac Reservation	Certified, with conditions	No, unless conditions are <i>not</i> followed. Tribal notification required.
All federally-recognized American Indian reservations in Minnesota and Wisconsin not listed in table ¹	Certified	No.
State of Wisconsin	Denied without prejudice	Yes, from WI DNR.
Red Cliff Reservation	Denied	Yes, from US EPA.
Lac du Flambeau Reservation	Denied	Yes, from Lac du Flambeau.
Sokaogon (Mole Lake) Reservation	Denied with exception of NWPs 20, 37, and 38	Yes, from Sokaogon (unless NWPs 20, 37, or 38).

Coastal Zone Management Act (CZMA) consistency concurrence was provided by the Minnesota Department of Natural Resources for activities in the coastal zone of Lake Superior in Minnesota. CZMA consistency concurrence from the Wisconsin Department of Administration is presumed in the coastal zones of Lake Superior and Lake Michigan in Wisconsin.

All WQCs, WQC denials and CZMA determinations have been incorporated into the attached NWPs and copies of the certification letters are available at the website listed below.

Information concerning the nationwide permits and conditions may be found on the St. Paul District’s web page located at: www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/. Questions concerning implementation of the NWPs and conditions or the regional conditions within the St. Paul District can be directed to Jill Bathke (651) 290-5697 or at jill.c.bathke@usace.army.mil.

¹ With the exception of the Bad River Band of Lake Superior Chippewa.

2017 Nationwide Permits Issued in the States of Minnesota and Wisconsin

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
13. Bank Stabilization
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
22. Removal of Vessels
25. Structural Discharges
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
48. Commercial Shellfish Aquaculture Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shoreline

2017 Nationwide Permits Revoked in the States of Minnesota and Wisconsin

(These activities will be reviewed using an individual permit process or other applicable general permit)

8. Oil and Gas Structures on the Outer Continental Shelf
12. Utility Line Activities
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
21. Surface Coal Mining Activities
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
34. Cranberry Production Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

NOTICE TO EDITORS:

This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising. For more information call the St. Paul District Public Affairs Office, 3091794-5274.

2017 Nationwide Permits St. Paul District Regional Conditions

To qualify for NWP authorization, the prospective permittee must comply with the following regional conditions, as applicable, in addition to any regional or case specific conditions imposed by the division engineer or district engineer. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

The following Regional Conditions are applicable to all NWPs:

Nationwide Permit (NWP) Limitations:

- A. **Discretionary authority:** As allowed under 33 CFR 330.1(d), the District retains discretionary authority to require an individual permit of any activity eligible for authorization by a NWP based on concern for the aquatic environment or for any other factor of the public interest.
- B. **Limit on Tributary Impacts:** Any regulated activity that would result in the loss of greater than 500 linear feet of a tributary in a single location is not authorized by a NWP with the exception of projects verified by NWPs 13, 27, 32, 37, 53 or 54 where the permanent alteration would have an overall beneficial effect on the aquatic ecosystem associated with discharges proposed. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that permanent alteration of the tributary would have an overall beneficial effect on the aquatic ecosystem associated with the discharges proposed. This regional condition does not expand the limitations of a specific NWP where that NWP is more restrictive.
- C. **Linear Projects:** No linear utility or linear transportation projects are eligible for authorization by NWPs. These projects will be reviewed for authorization under the St. Paul District's regional or programmatic general permits or an individual permit.
- D. **Great Lakes Compact:** No project or part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin is authorized by NWPs.
- E. **Tribal Rights:** As stated in General Condition 17 of the NWPs, no activity may impair tribal rights, including treaty rights, protected tribal resources or tribal lands.
- F. **Areas under a Special Area Management Plan:** Regulated activities located within an area eligible for authorization under a valid Special Area Management Plan with an associated programmatic general permit are ineligible for authorization by NWPs.
- G. **Designated Critical Resource Water:** The Lake Superior National Estuarine Research Reserve is a designated critical resource water and is subject to the NWP limitations and PCN requirements described in General Condition #22 of the NWPs.
- H. **Calcareous fens:**
WISCONSIN: No work in a calcareous fen is authorized by a NWP unless the Wisconsin Department of Natural Resources (WI DNR) has approved an individual permit for the proposed regulated activity. Project proponents must provide evidence of an approved individual permit to the District.
MINNESOTA: No work in a calcareous fen is authorized by a NWP unless the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to a project that otherwise qualifies for authorization by a NWP. Project proponents must provide evidence of an approved fen management plan to the District. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.

Pre-Construction Notification (PCN) Requirements for Specific Water/Places

- I. **PCNs for Special Aquatic Resources:** A project proponent must notify the District by submitting a PCN if a regulated activity would occur in any of the following aquatic resources. **Prior to beginning work in these waters, a District NWP verification letter must be received.**

PROJECTS IN WISCONSIN:

- (1) state-designated wild rice waters (<https://data.glifwc.org/manoomin.harvest.info>);
- (2) coastal plain marshes;
- (3) bog wetland plant communities;
- (4) interdunal wetlands;
- (5) Great Lakes ridge and swale complexes;

The complete Ramsar list is available at (<https://rsis Ramsar.org/>).

More information about plant community types 2-5 listed above, may be obtained from the Wisconsin Department of Natural Resources website at: <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

Additional information on identifying bog and fen communities can be found at: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>.

PROJECTS IN MINNESOTA:

- (1) wild rice waters listed in Appendix A of these conditions and identified in Minn. R. 7050.0470, subpart 1;

Additional information on identifying bog and fen communities can be found at: <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx> and at the MN DNR's Native Plant Community Classification's website: <http://www.dnr.state.mn.us/npc/classification.html>.

- J. **PCNs for Bridges, Structures, and Vessels more than 50 years old:** A project proponent must notify the District by submitting a PCN if work or fill requiring District authorization would affect a bridge, structure or permanently moored or sunken vessels more than 50 years old.
- K. **PCNs for Suspected Sediment or Soil Contamination:** A project proponent must notify the District by submitting a PCN if any regulated activity would occur in areas of known or suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <https://www.epa.gov/superfund/search-superfund-sites-where-you-live>. This condition does not apply to NWP 20. Response Operations for Oil or Hazardous Substances.
- L. **PCNs for the Apostle Islands National Lakeshore and Madeline Island:** A project proponent must notify the District by submitting a PCN if the regulated activity would result in the work, fill or placement of a structure within the boundaries of the Apostle Islands National Lakeshore or Madeline Island in Wisconsin. **Prior to beginning regulated activities in these waters, a District NWP verification letter must be received.**
- M. **PCNs for Temporary Impacts:** A project proponent must notify the District by submitting a PCN if temporary impacts would remain in place for longer than 90 days between May 15 and November 15. The PCN must specify how long the temporary impact will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. See also Regional Condition Q.

Mitigation Requirements

- N. **Compensatory Mitigation:** Proposed projects that require a PCN must include a statement describing how permanent *and* temporary impacts to waters of the U.S. would be avoided and minimized. The PCN must also include either: (a) a statement describing how impacts to waters of the U.S. would be compensated in accordance with the Federal Mitigation Rule (33 CFR Part 332) and the current St Paul District Policies for Compensatory Mitigation or (b) a statement explaining why compensatory mitigation should not be required for the proposed impacts.

Site Protection

- O. **Site Inspection:** The permittee shall allow representatives from the District to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the NWP authorization.
- P. **Restoration for Temporary Impacts:** All temporary impacts in waters of the U.S., including wetlands, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. A project proponent may request, in writing, a waiver from this condition from the District. An acceptable reason for a waiver to this condition may include, but is not limited to, the District allowing natural restoration of the site when the resulting grade and existing seed bank are sufficient for the site to restore to pre-construction conditions.
- Q. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
PART A, ACTIVITIES WITHOUT PCN REQUIREMENTS:
Temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have lapsed all temporary discharges must be removed in their entirety. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, a PCN is required and the activity is subject to the requirements and limitations described in part B of this regional condition.
PART B, ACTIVITIES WITH PCN REQUIREMENTS:
The PCN must specify how long the temporary impact will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Temporary impacts are allowed to stay in place as long as specified in the PCN unless otherwise conditioned in a Corps NWP verification. All temporary impacts must be removed in their entirety in accordance with the plan described in the PCN unless otherwise conditioned in a NWP verification provided by the District.
- R. **Culverts and Crossings:** Unless a NWP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by a NWP are to follow (or be restored to) the natural alignment and profile of the tributary. The culvert(s) or bridge(s) must adequately pass bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.
- S. **Best Management Practices:** To minimize adverse effects from soil loss and/or sediment transport that may occur as a result of the authorized discharge and associated earth work, appropriate best management practices shall be maintained and remain in place until the affected area is stabilized with vegetation or ground cover.
- T. **Riprap:** For all NWPs that allow for the use of riprap material for bank stabilization, only rock shall be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows. A project proponent may request from the District, in writing, approval to use alternative riprap materials.
- U. **Pollutant or Hazardous Waste Spills:** If a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
IN WISCONSIN: the Wisconsin Department of Natural Resources' Spills Team at 1-800-943-0003
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
The permittee is responsible for removing such pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws.
- V. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
- W. **Compliance:** The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the NWP and any special conditions included in any written verification letter from the District. The permittee is ultimately responsible for ensuring that all the terms and conditions of the NWPs are complied with.

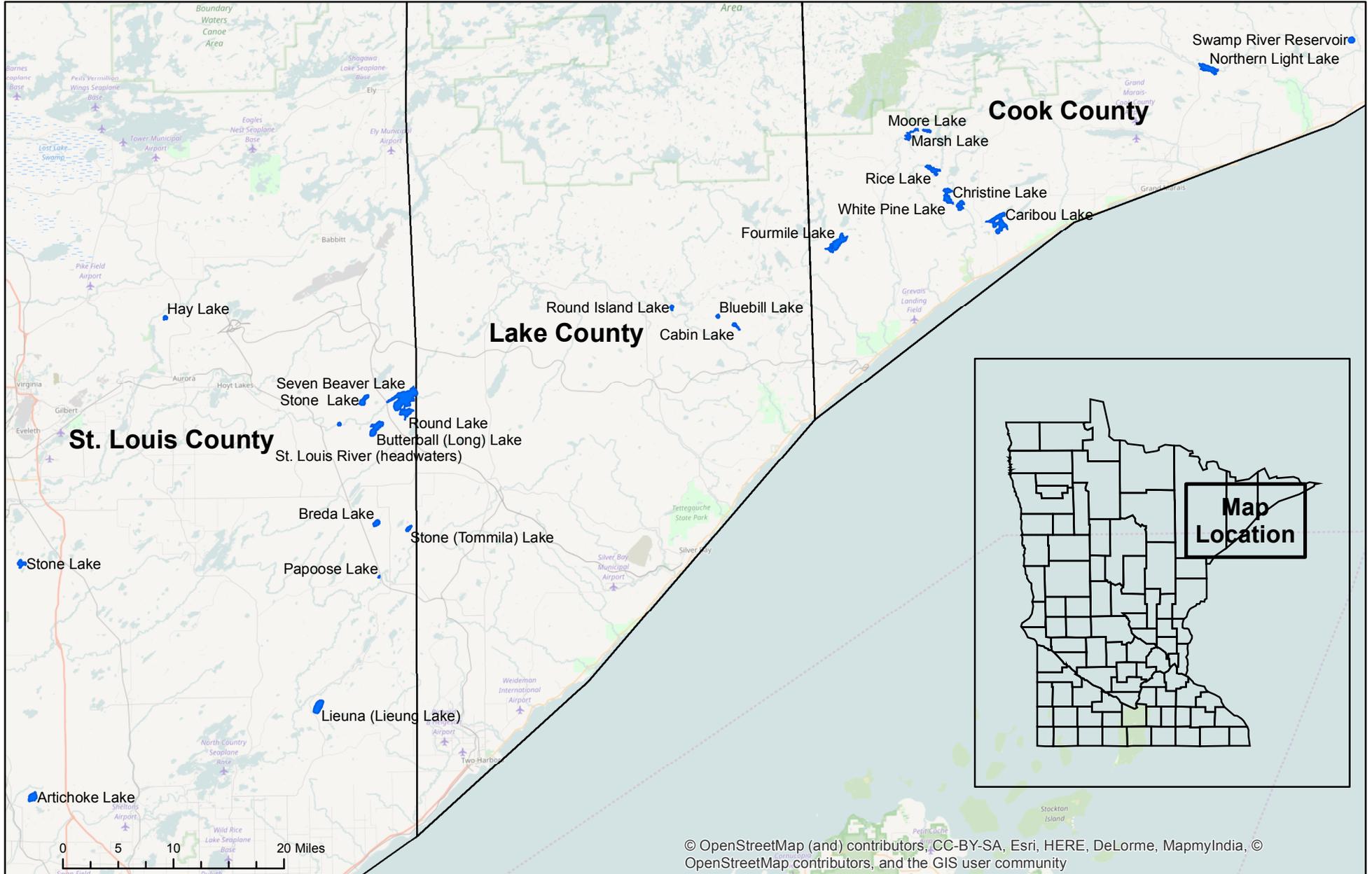
The following Regional Conditions are applicable to a specific NWP:

- NWP 3. Maintenance:** The project proponent must notify the District Engineer by submitting a PCN if (1) loss of waters of the U.S., including wetlands, exceed 1/10 acre, beyond the footprint of the existing structure or project; or (2) temporary impacts from flooding, filling, excavating, drainage, or mechanized land-clearing to waters of the U.S., including wetlands, exceeds 1/2 acre, beyond the footprint of the existing structure or project. This notification requirement is in addition to the notification criteria listed for this NWP. This regional condition applies to paragraphs a and c of NWP 3.
- NWP 25. Structural Discharges:** The project proponent must notify the District Engineer by submitting a PCN if loss to waters of the US, including wetlands, exceeds 400 square feet.
- NWP 27. Aquatic Habitat Restoration, Establishment and Enhancement Activities:** This NWP does not authorize the permanent conversion of forested, bog, fen, sedge meadow, or shrub-carr wetlands to other plant communities. A project proponent may request, in writing, a waiver from this condition from the District. The waiver will only be issued if it can be demonstrated that the conversion would restore wetland plant communities to the pre-settlement condition or a watershed approach and that the current landscape and hydrologic conditions would sustain the targeted community.
- NWP 33. Temporary Construction, Access and Dewatering:** The project proponent must notify the District Engineer by submitting a PCN if the temporary impacts from flooding, filling, excavating, drainage, or mechanized land-clearing: (1) would impact 1/2 acre or greater of waters of the U.S., including wetlands; or (2) would impact greater than 300 linear feet of a tributary. This notification requirement is in addition to the notification criteria listed for this NWP. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project condition
- NWP 40. Agricultural Activities:** Drainage tile outlets installed or replaced must be protected to limit erosion to the receiving water. This protection may include rock riprap, vegetation, or other measures. Erosion protection measures must be specified by the applicant in a PCN.
- NWP 41. Reshaping Ditches:** The project proponent must notify the District Engineer by submitting a PCN if the regulated activity proposed would result in: (1) reshaping of more than 300 linear feet of a ditch or (2) if excavated material would be placed into a water of the U.S., including wetlands. The PCN must include an explanation how water quality goals will be accomplished and original, as-built specifications of the ditch.
- NWP 46. Discharges in Ditches:** The discharge must not cause the loss of greater than 1/2-acre of waters of the U.S., including wetlands.
- NWP 52. Water-Based Renewable Energy Generation Pilot Projects:** NWP 52 does not authorize structures or work in Lake Michigan and Lake Superior within the geographic regulatory boundaries of the St. Paul District.



US Army Corps of Engineers®

Minnesota Wild Rice Waters



401 Water Quality Conditional Certification for the State of Minnesota

Issued by the Minnesota Pollution
Control Agency



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

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March 29, 2017

Mr. Chad Konickson
U.S. Army Corps of Engineers
Regulatory Branch Chief, St. Paul District
180 Fifth Street East, Suite 700
St. Paul MN 55101-1678

RE: Nationwide Permits – Clean Water Act Section 401 Water Quality Certification

Dear Mr. Konickson:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. 7001.1400-7001.1470, 7050, 7052, and 7053. The MPCA examined the information furnished by the U.S. Army Corps of Engineers (USACE), including the final Nationwide Permits (NWP) issued by USACE Headquarters on January 6, 2017, and regional conditions proposed by USACE St. Paul District October 14, 2016, and is requiring conditions through the 401 Water Quality Certification.

The MPCA certifies the referenced general NWP because there is reasonable expectation that the activities identified within them will be conducted in a manner that will not violate applicable water quality standards provided the work is done in accordance with the following conditions, which shall become conditions of the NWP:

Conditions for All NWP Activities

1. The permittee must ensure that all waters of the United States in or bordering the construction areas that are not authorized to be impacted by the project are clearly identified prior to construction. This may be done through demarcation of the construction area on plan sheets or through marking boundaries in the field, for example construction staking, flagging, or the use of silt fences along boundaries. The permittee must not impact these areas while conducting activities under this permit.
2. Compensatory mitigation as required by NWP, General Condition 23, will satisfy the MPCA rules governing wetlands, Minn. R. 7050.0186.
3. The permittee must install in-water best management practices (BMPs) to minimize total suspended solids (TSS) and sedimentation for any work conducted below the ordinary high water level (OHWL) as defined in Minn. Stat. § 103G.005, subd. 14, of any water of the United States.

The permittee must document the in-water BMPs to be used during the authorized work prior to disturbing any land at the site; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. This documentation is not required to be submitted to the MPCA, but must be kept on-site during active construction by the permittee or the permittee's contractor until the project is complete. Proper installation of BMPs is required before conducting the authorized in-water activities and properly maintained

throughout the duration of the project's in-water work. While conducting the authorized work, the permittee must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. If the project activities cause an observable increase in TSS or sedimentation as described in Minn. R. 7050.0210. subp. 2 outside or downstream of the authorized defined working area, the project activities must immediately cease and any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. This Certification does not authorize the violation of applicable water quality standards outside or downstream of the defined work area. Minnesota water quality standards are located in Minn. R. 7050.

Information on the types of BMPs that may be suitable for in-water work is located in the Minnesota Department of Natural Resources Manual titled *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001*, located at: http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

4. The permittee must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210. subp.2. BMPs must be used that minimize TSS and sedimentation by removing solids in the water before discharging the water. The permittee must document the in-water BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. The permittee must ensure that properly installed BMPs are in place before conducting the authorized activities and maintained throughout the duration of the dewatering work.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

5. The permittee must ensure any earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained in a manner that will prevent any of the earthen material from eroding. The permittee must completely remove temporary structures and restore original bathymetry, or contours at project completion.
6. It is the permittee's responsibility to ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303-(d) listed impaired waters. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: <http://www.pca.state.mn.us/lupg1125> and <http://www.pca.state.mn.us/mvri1126>. The applicable water quality standards are located in Minn. R. ch. 7050.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

7. Any fill used in any water of the United States must be clean fill that is free of any solid waste, toxic or hazardous contaminants, and invasive species as defined in Minn. Stat. ch. 84D and Minn. R. ch. 6216,

including those discussed in "A guide to Nonnative Invasive Plants Inventory in the North by Forest Inventory and Analysis," 2009, C. Olson and A. Cholewa.

http://www.nrs.fs.fed.us/pubs/gtr/gtr_nrs52.pdf.

8. The permittee must provide: a) a copy of this Certification; b) documentation of any required BMPs under conditions 3 and 4; and c) any written demarcation of waters of the United States under condition 1; to any prime contractor responsible for completing the project's authorized activities. The permittee must also ensure that there is a mechanism in place requiring each prime contractor to provide the same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to Waters of the United States, must be available at or near the project site for use by contractors or staff responsible for completing the project work and must be available within 72 hours when requested by the MPCA staff.
9. The permittee is responsible for compliance with all applicable conditions of this Certification.
10. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.

Conditions Specific to Individual NWP Activities

In addition to all other applicable Certification conditions, the following activities must also comply with the activity-specific conditions below:

1. **NWP 7, Outfall Structures and Associated Intake Structures:** The permittee must ensure that impacts associated with outfall and intake structures do not harm aquatic life outside of the permitted project area and do not result in an unauthorized loss of waters of the United States without proper mitigation in accordance with General Condition 23 of NWPs.
2. **NWP 16, Return Water from Upland Contained Disposal Areas:** The permittee must ensure that return water from dredging that is directly returned to the original source water meet the same water quality standards that apply to the original source water. If the return water is discharged into a receiving water that is not the original source water, then the permittee must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water. Discharges of return water must not violate the state water quality standard identified in Minn. R. 7050.0210. subp.2.
3. **NWP 53, Removal of Low-Head Dams:** The permittee must evaluate and manage the accumulated sediment behind the structure to minimize downstream effects during and following the removal of the structure. Use low-flow and winter construction and other appropriate BMPs required in conditions 3 and 4 below.

NOTIFICATIONS: The following notifications are not conditions of the MPCA CWA 401 Certification of NWPs. They provide practices that can help reduce the potential environmental impacts or they provide notification to the public in Minnesota, that certain discharges in Waters of the State, as defined in Minn. Stat. § 115.01, subd. 22, or activities associated with discharges into Waters of the State, are also regulated under other rules administered by the MPCA:

1. Minn. R. chs. 7001 and 7090 requires any activity that will disturb one acre or more of land must first acquire a National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS)

General Stormwater Permit from the MPCA for discharging stormwater during construction activity. Both the owners and operators of construction activity disturbing one acre or more of land are responsible for obtaining and complying with the conditions of the NPDES/SDS General Stormwater Permit prior to commencing construction activities. Sites disturbing less than one acre within a larger common plan of development or sale that is more than one acre also need permit coverage. A detailed Stormwater Pollution Prevention Plan (SWPPP), containing both temporary and permanent erosion and sediment control plans, must be prepared prior to submitting an application for the NPDES/SDS General Stormwater Permit. In addition, any project that will result in over 50 acres of disturbed area and has a discharge point within one mile of a special or impaired water is required to submit their SWPPP to the MPCA for a review at least 30 days prior to the commencement of land disturbing activities. If the SWPPP is out of compliance with the terms and conditions of the NPDES/SDS General Stormwater Permit, further delay may occur. For more information, please visit the following webpage: <https://www.pca.state.mn.us/water/construction-stormwater>.

2. Minn. R. ch. 7001.0030 requires that, prior to testing the structural integrity of any newly installed pipeline or any existing pipeline maintained or repaired that is authorized by NWP, the permittee must obtain NPDES/SDS Permit coverage from the MPCA. The NPDES/SDS Permit regulates the discharge of water and trench waters associated with this activity.
3. Chloride from winter road salt affects water quality. The MPCA encourages public road authorities pursuing projects under the general permit to consider the use of BMPs to reduce the use of chloride. General information about chloride and water quality, including the Draft Twin Cities Metropolitan Area Chloride Management Plan, is located at: <http://www.pca.state.mn.us/r0pgb86>.
4. When riprap is used, the permittee should consider placing riprap in the following manner:
 - a. Use natural rock (average less than 6 inches or more than 30 inches in diameter) that is free of debris that may cause pollution or siltation.
 - b. A filter of crushed rock, gravel, or filter fabric material can be placed underneath the rock.
 - c. The riprap should be no more than 6 feet waterward of the OHWL as defined in Minn. Stat. § ch. 103G.005 subd.14.
 - d. The riprap should conform to the natural alignment of shore and should not obstruct navigation or the flow of water.
 - e. The minimum finished slope waterward of the OHWL should be no steeper than 3 to 1 (horizontal to vertical).

Disclaimer:

Section 401 Certification does not release the permittee from obtaining all necessary federal, state, and local permits. It does not limit any other permit where requirements may be more restrictive. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Minnesota or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA) or the National Environmental Policy Act (NEPA). In accordance with MEPA, Minn. Stat. § 116D.04, subd. 2b, and related rules, projects that are required to complete an

Mr. Chad Konickson

Page 5

March 29, 2017

Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) may not be started until:

- A petition for an EAW is dismissed
- A negative declaration on the need for an EIS has been made
- An EIS has been determined to be adequate
- A variance has been granted by the state Environmental Quality Board

An Environmental Review, required by law for any project, must be complete in order for any state permit or Certification to be valid.

The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0170.

Pursuant to Minn. R. 7001.1450, failure to comply with any of the conditions in this Certification may result in the MPCA invalidating or revoking this 401 Water Quality Certification on a project-by-project basis.

If you have any questions on this Certification, please contact Jim Brist at 651-757-2245 or 401Certification.pca@state.mn.us.

Sincerely,



Melissa Kuskie

Supervisor

Certification, Environmental Review & Rules Section

Resource Management & Assistance Division

MK/JB:ds

cc: Janice Cheng, EPA
Peter Swenson, EPA
Wendy Melgin, EPA
Kerryann Weaver, EPA
Pete Fasbender, USFWS
Andrew Horton, USFWS
Luke Skinner, DNR
Julie Ekman, DNR
Jill Bathke, USACE
Andy Beaudet, USACE
Kristen Hafer, USACE

401 Water Quality Certification For:

- Bois Forte Band of Chippewa, MN
- Mille Lacs Band of Chippewa, MN
- Prairie Island Community, MN
- Red Lake Band of Chippewa, MN
- Leech Lake Band of Ojibwe, MN
- Shakopee Mdewakanton Sioux Community, MN
- Upper Sioux Community, MN
- Lower Sioux Community, MN
- White Earth Band of Chippewa, MN
- Minnesota Chippewa Tribe
- Forest Country Potawatomi Community, WI
- Ho-Chunk Nation, WI
- Lac Courte Oreilles Band of Ojibwe, WI
- Menominee Indian Tribe of Wisconsin
- Oneida Tribe of Wisconsin
- St. Croix Chippewa Indians of Wisconsin
- Stockbridge-Munsee Community, WI

AND

401 Water Quality Certification DENIAL for the Red Cliff Band of Lake Superior Chippewa, Wisconsin

Issued by the US Environmental Protection
Agency, Region 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 24 2017

REPLY TO THE ATTENTION OF:

WW-16J

Colonel Sam Calkins
District Engineer
St. Paul District, Corps of Engineers
180 5th Street East, Suite 700
St. Paul, Minnesota 55101

Re: Clean Water Act Section 401 Certification Decision for the 2017 Nationwide Permits and General Permit-15-R as Applied on Indian Reservations in Minnesota and Wisconsin

Dear Colonel Calkins:

The U.S. Environmental Protection Agency, Region 5 (EPA) has reviewed the Nationwide Permits (NWP) published in the Federal Register on January 6, 2017. The Corps of Engineers, St. Paul District (District), will reissue 42 of the NWP for use in Minnesota and Wisconsin and revoke 10 other NWP in both states. EPA has also reviewed General Permit-15-R (GP) as described in a Public Notice dated December 27, 2016, which the District will issue for use in Minnesota and Wisconsin.

EPA has reviewed the NWP and GP as they apply within the exterior boundaries of Indian reservations in Minnesota and Wisconsin, in accordance with Section 401 of the Clean Water Act (33 USC § 1341). EPA has determined that the requirements for certification have been met, and hereby grants Section 401 certification with no conditions within the exterior boundaries of the following reservations:

Bois Forte Band of Chippewa
Mille Lacs Band of Chippewa
Prairie Island Community
Red Lake Band of Chippewa
Leech Lake Band of Ojibwe
Shakopee Mdewakanton Sioux Community
Upper Sioux Community
Lower Sioux Community
White Earth Band of Chippewa
Minnesota Chippewa Tribe
Forest Country Potawatomi Community
Ho-Chunk Nation
Lac Courte Oreilles Band of Ojibwe

Menominee Indian Tribe of Wisconsin
Oneida Tribe of Wisconsin
St. Croix Chippewa Indians of Wisconsin
Stockbridge-Munsee Community

Section 401 certification is hereby denied within the exterior boundaries of the following reservation, pending EPA's consultation with the tribe to consider any information regarding conditions which may be needed to achieve compliance with the purpose of the Act:

Red Cliff Band of Lake Superior Chippewa

If you have any questions, or if we can be of further assistance, please contact Janice Cheng of my staff at (312) 353-6424 or cheng.janice@epa.gov.

Sincerely,



Christopher Korleski
Director, Water Division

cc: Bill Baer, St. Paul District, Corps of Engineers
Jill Bathke, St. Paul District, Corps of Engineers

**401 Water Quality Conditional
Certification for the Fond du Lac Band
of Lake Superior Chippewa in
Minnesota**

Issued by the Fond du Lac Band

Fond du Lac Band of Lake Superior Chippewa Resource Management Division

1720 Big Lake Road
Cloquet, MN 55720
Phone (218) 878-7101
Fax (218) 878-7130



Office of Water Protection 401 Water Quality Certification

APPLICANT: USACE St. Paul District

ISSUED: 24 April 2017

Administration
Conservation Enforcement
Environmental
Fisheries
Forestry
Land Information
Natural Resources
Wildlife

Pursuant to § 401 of the Clean Water Act (33 U.S.C. 1341), the Fond du Lac Band of Lake Superior Chippewa is required to certify whether the activity described below will violate applicable water quality standards. Accordingly, the Fond du Lac Reservation Office of Water Protection requires reasonable assurance that the activity will not violate provisions of the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation, Ordinance #12/98 (Adopted by Resolution #1403/98 of the Fond du Lac Reservation Business Committee on December 10, 1998; Amended by Resolution #1286/01 of the Fond du Lac Reservation Business Committee on September 11, 2001), the Fond du Lac Band of Lake Superior Chippewa Water Quality Certification Standards, Ordinance #01/06 (Adopted by Resolution #1033/06, as amended, of the Fond du Lac Reservation Business Committee on March 28, 2006), or of § § 301, 302, 303, 306, or 307 of the Clean Water Act.

A request for Clean Water Act (CWA) § 401 Water Quality Certification has been received from the United States Army Corps of Engineers – St. Paul District for the 2017 Nationwide Permits for certain activities in waters and wetlands in Minnesota and Wisconsin (2017 NWP). Fond du Lac's Water Quality Standards may be found at: <http://www.fdlrez.com/government/ords/12-98ord.pdf>

Applicant: **Regulatory Branch**
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678

Authorized Work: The authorized work consists of only those activities (and only to the extent of the impact limitations) specified in the 2017 Nationwide Permits where the discharge of dredged or fill material takes place within the external boundaries of the Fond du Lac Reservation.

Location(s): Construction activities authorized under these Nationwide Permits may occur anywhere permissible by the Nationwide Permits and this Certification within the exterior boundaries of the Fond du Lac Reservation.

(Certification continued):

Background: The Fond du Lac Reservation Office of Water Protection (OWP) has examined the request for Certification and the 2017 Nationwide Permits (including both General and Regional Conditions) and based upon our evaluation of the supplied information that is relevant to Water Quality Certification considerations, we certify that there is reasonable assurance that activities associated with the Nationwide Permits will be conducted in a manner that will not violate the Fond du Lac Band of Lake Superior Chippewa Water Quality Standards of the Fond du Lac Reservation Ordinance #12/98, as amended.

The §401 certification process ensures that Fond du Lac has the opportunity to establish conditions or even deny certification in order to protect our reservation water resources. The conditions that Fond du Lac believe are necessary to assure compliance with applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307, and with appropriate requirements of tribal law (specifically, Fond du Lac Ordinance #12/98, as amended) are related to our interpretation of our narrative water quality standards and our antidegradation policies. The condition regarding turbidity (no more than 10% increase over ambient or background turbidity) defines the water quality based effluent limitation (WQBEL) and monitoring/reporting requirements necessary to assure that any applicant for this Federal permit will be in compliance with our water quality standards. Monitoring and reporting requirements allow Fond du Lac, USEPA, and USACE to confirm that the certification conditions intended to protect the existing high quality of our reservation waters are effective and being implemented. They can trigger adaptive management practices at a site, and can help inform the development of more robust certification conditions in the future. Monitoring and reporting activities help permittees to actually see and understand the impact, or avert an impact, on water quality resulting from their permitted actions. Over the five (5) years period of EPA's Construction General Permit (CGP 2012) had been in effect with the Fond du Lac turbidity limit and monitoring requirement, we have only encountered one incident of exceedance of this permit condition. This exceedance led to immediate corrective action that may not have otherwise been required without this specific condition in place.

Fond du Lac considers all waters of the reservation to be Tier 2 (higher quality, on a pollutant by pollutant basis, than the minimum quality necessary to maintain designated uses), and our primary wild rice lakes are Tier 3 or "Outstanding Reservation Resource Value" waters. It is entirely consistent with EPA guidance on antidegradation review¹, for instance, to define a significance threshold above which the effects on water quality require findings of necessity and social and economic importance to support any decision about the lowering of water quality in high quality waters. The significance threshold of

¹ Memorandum from Ephraim S. King, Director, EPA Office of Science and Technology, to Water Management Division Directors, Regions 1-10, "Tier 2 Antidegradation Reviews and Significance Thresholds", August 10, 2005.

(Background continued):

10% has been independently defined and approved by EPA through multiple processes that have included environmental groups, industry representatives, scientific experts, and public input, including Water Quality Guidance for the Great Lakes, and other states as well.

Fond du Lac believes that the turbidity-related condition cannot be made any less stringent without violating the requirements of tribal law. Section 301(h) of our water quality standards specifies “settleable and suspended solids (turbidity) should not reduce the depth of the compensation point for photosynthetic activity by more than 10% from the seasonally established norm for aquatic life”. Our comprehensive water quality monitoring data collected over the last eighteen years provides a defensible basis for defining ambient conditions and protecting the existing high quality and biological integrity in our surface waters.

Certification: Certification is **DENIED** to any new discharge to Outstanding Reservation Resource Waters (ORRW) as described in § 105 b. 3. of the Fond du Lac Water Quality Standards (Ordinance #12/98, as amended). Although additional waters may be designated in the future, currently Perch Lake, Rice Portage Lake, Miller Lake, Deadfish Lake, and Jaskari Lake are designated as ORRWs. New dischargers wishing to discharge to an ORRW must obtain a separate Water Quality Certification of such discharges. As per § 201(e) of the Water Quality Certification Standards Ordinance #01/06 this Water Quality Certification is granted as **CERTIFICATION WITH CONDITIONS** for all other waters/wetlands within the Fond du Lac Reservation and therefore the following conditions apply:

1) A copy of the Pre-Construction Notification (PCN) MUST be sent to the Fond du Lac Office of Water Protection at the same time it is sent to the St. Paul District, Corps of Engineers. The PCN must include all applicable drawings, plans, and specifications for the project. The Fond du Lac Office of Water Protection must be invited to participate in any meetings between the St. Paul District, the Local Government Unit, Technical Evaluation Panel and the applicant. The PCN can be submitted electronically to richardgitar@FDLREZ.com or by hardcopy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

2017 Nationwide Permits applicants are encouraged to work with the FdL Office of Water Protection (OWP) in the development of their projects since most of such projects will require a Wetland Activity Permit or Exemption Certificate under

(Condition #1 continued):

provisions of the Fond du Lac Wetlands Protection and Management Ordinance (WPMO) (Ordinance #03/06).

2) If the project will entail a discharge to any watercourse or open water body, the turbidity limit shall NOT exceed 10% of natural background within any receiving water(s) as determined by Office of Water Protection staff. For such discharges, turbidity sampling must take place within 24 hours of a ½-inch or greater rainfall event. The results of the sampling must be reported to the Office of Water Protection within 7 days of the sample collection. All sample reporting must include the date and time, location (GPS: UTM/Zone 15), and NTU. 2017 Nationwide Permits applicants are encouraged to work with the Office of Water Protection in determining the most appropriate location(s) for sampling.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

3) Receiving waters with open water must be sampled for turbidity prior to any authorized discharge as determined by Office of Water Protection staff. This requirement only applies to receiving waters in which no ambient turbidity data exists.

Water sample data reporting should be submitted electronically to richardgitar@FDLREZ.com or by hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

4) The work shall be accomplished in conformance with the accepted plans, specifications, data, permit application materials (including the PCN), and other information submitted in support of the project application and the limitations, requirements and conditions set forth herein.

5) The Office of Water Protection shall be notified at least 48 hours prior to the commencement of work.

(Conditions continued):

6) Impacts to waters of the Fond du Lac Reservation other than those specifically addressed in the plans, application materials, and this certification are prohibited. All lakes, streams, springs, and wetlands for which impacts are not authorized shall be fully protected prior to, during and after construction until the area is stabilized.

7) All work shall be carried out in such a manner as will prevent violations of water quality criteria as stated in the Water Quality Standards of the Fond du Lac Reservation, Ordinance 12/98, as amended. This includes, but is not limited to, the prevention of any discharge that causes a condition in which visible solids, bottom deposits, or turbidity impairs the usefulness of water of the Fond du Lac Reservation for any of the uses designated in the Water Quality Standards of the Fond du Lac Reservation. These uses include wildlife, aquatic life, warm water fisheries, cold water fisheries, subsistence fishing (netting), primary contact recreation, secondary contact recreation, cultural, wild rice areas, aesthetic waters, agriculture, navigation, and commercial.

8) Appropriate steps shall be taken to ensure that petroleum products or other chemical pollutants are prevented from entering waters of the Fond du Lac Reservation. All spills must be reported to the appropriate emergency management Agency (National Response Center AND the State Duty Officer), and measures shall be taken immediately to prevent the pollution of waters of the Fond du Lac Reservation, including groundwater. The Fond du Lac Office of Water Protection must also be notified immediately of any spill regardless of size.

9) To prevent the introduction of invasive species, ALL contractors and sub-contractors MUST high pressure wash ALL equipment (including timber mats) before use on the Fond du Lac Reservation. Notification of the completion of this requirement MUST be provided to the Fond du Lac Office of Water Protection before any equipment is mobilized to the work site. The applicant shall be held responsible for the control of any invasive species introduced as a result of their project conducted under the authorization of any Nationwide Permit.

Notification can be emailed to richardgitar@FDLREZ.com or hard copy sent to:

**Fond du Lac Reservation
Office of Water Protection
1720 Big Lake Road
Cloquet, MN 55720**

10) ALL seed mixes, whether used for temporary stabilization or permanent seeding, shall NOT contain any annual ryegrass (*Lolium* species). Canadian Wild

(Condition #10 continued):

Rye (*Elymus* species) or Oats (*Avena* species) may be used as a replacement in upland seed mixes. Upland seed mixes approved by the Minnesota Department of Transportation (MnDOT) may be used without Office of Water Protection approval provided they do NOT contain annual ryegrass. Seed mixes 21-111 (Oats Cover Crop) and 21-112 (Winter Wheat Cover Crop) are approved for use on the Fond du Lac Reservation.

11) Seed mixes used in wetlands MUST be approved by Office of Water Protection staff prior to use. Wetland seed mixes approved by the Minnesota Board of Water and Soil Resources (BWSR) may be used without Office of Water Protection approval if they do NOT contain annual ryegrass. Seed mixes 34-171 (Wetland Rehabilitation), 34-181 (Emergent Wetland), 34-361 (Riparian Northeast) and 34-371 (Wet Meadow Northeast) are approved and recommended for use on the Fond du Lac Reservation. If seed mix approval is required under this condition, applicants should contact the following:

Richard Gitar, Water Regulatory Specialist
Phone: 218-878-7122
Email: richardgitar@FDLREZ.com
Address: Fond du Lac Reservation
1720 Big Lake Road
Cloquet, MN 55720

12) ALL erosion and sediment control Best Management Practices (BMPs) shall be properly installed, maintained, inspected for effectiveness, replaced if not effective, and removed once the area has been properly stabilized or re-vegetated.

13) For temporary impacts, all appropriate steps shall be taken to ensure proper restoration of the site, including the separation, storage and replacement of soil horizons, removal of all rutting from maintenance operations, removal of all equipment, materials and construction BMPs, and returning the site to the original contours as much as possible.

14) Adverse impacts to formally listed state or federal threatened, endangered, or special concern species or their critical habitat is prohibited unless the appropriate agency has granted approval.

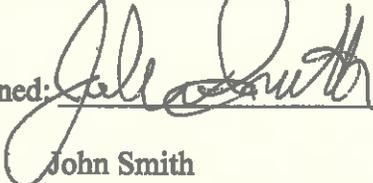
15) This certification does not authorize impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for such listing.

16) It is the responsibility of the applicant to convey all terms and conditions of this certification to all appropriate staff, workers, contractors and sub-contractors.

401 Certification – St. Paul District, Corps of Engineers – 2017 NWP – Page 7 of 7

(Certification continued):

Authorization of Certification: I, John Smith, acting on behalf of Reginald DeFoe, do grant Clean Water Act § 401 Water Quality Certification With Conditions to the U. S. Army Corps of Engineers – St. Paul District for the 2017 Nationwide Permits (2017 NWP) on the Fond du Lac Reservation.

Signed:  Date: 11-24-17

John Smith
Acting Resource Management Director
Fond du Lac Reservation

**401 Water Quality Conditional
Certification for the Grand Portage
Band of Lake Superior Chippewa in
Minnesota**

Issued by the Grand Portage Band



GRAND PORTAGE RESERVATION TRIBAL COUNCIL

Norman W. Deschampe - Chairman • Marie Spry - Vice Chair • Dennis B. Morrison - Secretary/Treasurer
John Morrin - Councilman • Rob Hull - Councilman

RESOLUTION NO. 07-17

GRANTING CONDITIONAL 401 CERTIFICATION FOR THE US ARMY CORPS OF ENGINEERS NATIONWIDE GENERAL PERMITS

The Grand Portage Reservation Tribal Council, on behalf of the Grand Portage Band of Chippewa, enacts the following resolution:

WHEREAS, the governing body of the Grand Portage Band of the Minnesota Chippewa Tribe is the Reservation Business Committee (also known as the Reservation Tribal Council (“RTC”)) pursuant to Article III, Section 2 of the Minnesota Chippewa Tribe Constitution; and

WHEREAS, the Grand Portage Band of the Minnesota Chippewa Tribe (“Band”) is a federally recognized Indian tribe possessing the inherent sovereign authority of an independent government; and

WHEREAS, the RTC has determined that water pollution endangers the health and welfare of Grand Portage members and residents of the Grand Portage Reservation, and adversely impacts tribal treaty fishing rights as well as cultural, religious, domestic, recreational, agricultural and other uses of the Reservation water resources;

WHEREAS, as an exercise of the Band’s inherent authority, the RTC enacted the Grand Portage Band of Chippewa Water Resources Ordinance (“Ordinance”) on July 25, 2001 and amended it on January 15, 2004 to protect the waters of the Grand Portage Reservation; and

WHEREAS, under the Ordinance, the RTC is empowered to act as the Water Resources Board (“Board”) created by the Ordinance; and

WHEREAS, in its capacity as Board, the RTC has taken all steps required under the Ordinance and federal law to grant conditional 401 certification for the Nationwide General Permits (“NWPs”), a copy of which is attached to this Resolution; and

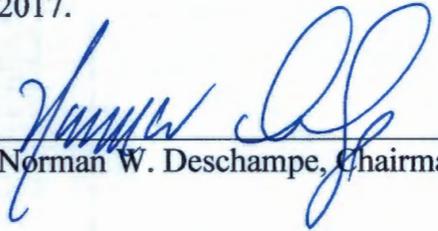


WHEREAS, in its capacity as Board, and after consultation with the Band's Environmental Department, the RTC finds that conditional certification of the NWP's is necessary to protect (a) the public health and welfare of the Band, its members, and others living on its Reservation, and; (b) the present and future use of Reservation waters for public and private water supplies; propagation of fish and aquatic life and wildlife; domestic and recreational purposes and agricultural; cultural, religious, commercial, industrial and other legitimate uses; and

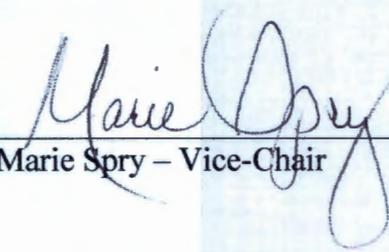
NOW, THEREFORE, BE IT RESOLVED, that the RTC, in its capacity as Board, adopts the attached conditional certification of the NWP's, and directs the Environmental Department to submit the conditional certification to the U.S. Army Corps of Engineers for inclusion in the final permit in accordance with the Federal Clean Water Act.

CERTIFICATION

We do hereby certify that the foregoing resolution was duly adopted by a vote of 3 for, 0 against, 0 silent, at a Special meeting of the Reservation Tribal Council, a quorum present, held on the 25th day of April, 2017.



Norman W. Deschampe, Chairman



Marie Spry - Vice-Chair

GRAND PORTAGE CONDITIONAL CERTIFICATION OF U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS

In accordance with the Clean Water Act, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“US ACE”) on January 6, 2017 publicly noticed its revision and renewal of certain nationwide permits (“NWP”) necessary for work in streams, wetlands and other waters of the United States under Section 404 of the Clean Water Act. The new NWPs will take effect March 19, 2017, and replace the existing permits, which expire on March 18, 2017.

The Grand Portage Band of Lake Superior Chippewa (the “Band”) is a federally recognized Indian tribe and has Treatment-in-the-same-Manner- As-a-State (“TAS”) for purposes of enforcement of federal water quality standards on the Band’s Reservation in northern Minnesota. Therefore, in accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards (“Water Quality Standards”) and the Grand Portage Water Resources Ordinance (as amended in 2004, the “Water Resources Ordinance”), the Grand Portage Environmental Resources Board (“Board”) has examined the proposed NWPs. The Board has determined that there is reasonable assurance that the discharges authorized under the NWPs will not violate the Water Quality Standards. The Water Quality Standards and Water Resources Ordinance can be obtained at the email listed below or at: www.1854treatyauthority.org/grand-portage.html

The Board has also determined that certain additional conditions are necessary to protect the following: (a) the public health and welfare of the Band, its members, and others living on the Band’s Reservation; and (b) the present and future use of Reservation Waters for public and private water supplies; propagation of fish, aquatic life, and wildlife; domestic and recreational purposes; and for agricultural, cultural, religious, commercial, industrial, and other legitimate uses. Accordingly, the following conditions apply to all NWPs which authorize the discharge of dredge or fill material into the waters of the Grand Portage Reservation (as defined in the Water Resources Ordinance). Except as otherwise provided by federal law, this certification is valid until the NWPs expire on March 18, 2022:

1. This certification applies only to those activities specifically authorized by the NWPs, as limited by Regional Conditions. These include but are not limited to the following:
 - a. In accordance with Regional Condition C, no linear utility or linear transportation projects are eligible for authorization under the NWPs.
 - b. In accordance with Regional Condition I, a pre-construction notification to the US ACE is required for projects that would impact bogs or fens, wild rice waters.
 - c. In accordance with Regional Conditions M and Q, pre-construction notification (“PCN”) is required for temporary impacts to Waters of the Reservation (as defined in the Water Resources Ordinance) that would remain in place for more than 90 days.
2. All discharges of dredged and/or fill material authorized by the NWPs must comply with the Water Quality Standards and Water Resources Ordinance, as well as Applicable Federal Standards (as defined in the Water Resources Ordinance).
3. Grand Portage is responsible for interpretation of the requirements of these conditions.
4. All appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering the Waters of the Reservation. All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of the Waters of the Reservation, including groundwater.
5. In situations where an applicant is required to submit a pre-construction notification (“PCN”) to the US ACE, the Band requires that a copy of the PCN be submitted to the Board at least 30 days in advance of sending the notification to the US ACE. Once the applicant receives written confirmation from the US ACE that the project is

authorized under this NWP, the applicant must provide a copy of the confirmation to the Board. The PCN and US ACE confirmation should be sent in hard copy and via email to:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605
Email: mwatkins@grandportage.com

6. The burden is on the applicant to demonstrate compliance with the Water Quality Standards, the Water Resources Ordinance, and Applicable Federal Standards whether or not the application is ultimately eligible for an NWP.
7. The Board retains full authority to ensure compliance with and to enforce the provisions of the Water Resource Ordinance and Water Quality Standards, Applicable Federal Standards, and these Certification conditions. Nothing herein affects the scope or applicability of other controlling tribal or federal requirements, including but not limited to impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for listing on the National Register of Historic Places under the National Historic Preservation Act, 54 U.S.C. §§ 300101 *et seq.*
8. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court. As provided by the Water Resources Ordinance, any interested party may request that a public hearing be scheduled regarding the Board's decision to grant conditional certification to the NWPs. Such a request must be directed to the following address within 30 days of this notice:
Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

Electronic versions of the proposed NWPs are available at the US ACE's Web site at:

<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Special%20Notices/Final%202017%20Nationwide%20Permit%20Issuance.pdf>.

Questions regarding the NWPs can be directed to the US ACE District Office at Department of the Army, St. Paul District, Corps of Engineers, 180 5th St. East, Ste. 700, St. Paul, MN 55101-1678. The US ACE St. Paul District contact for the NWPs is Jill Bathke at telephone number (651) 290-5697 or e-mail at Jill.C.Bathke@usace.army.mil.

Published March 4, 11, 18, and 25, 2017

**401 Water Quality DENIAL for the Lac
du Flambeau Band of Lake Superior
Chippewa in Wisconsin**

Issued by the Lac du Flambeau Band



LAC DU FLAMBEAU BAND
OF LAKE SUPERIOR
CHIPPEWA INDIANS

TRIBAL NATURAL RESOURCE DEPARTMENT

P.O. BOX 67
2500 HWY. 47 NORTH

LAC DU FLAMBEAU, WISCONSIN 54538

(715) 588-4213
FAX# (715) 588-3207

Fish Culture - Fisheries Management - Wildlife Management - Water Resources - Environmental Protection - Conservation Law - Energy - Air Quality

April 24, 2017

Jill Bathke
MN Policy Liaison/ Nationwide Permit Team Lead
St. Paul District Army Corps of Engineers
180 East 5th Street, Suite 700
St. Paul, MN 55101

Re: Request for water quality certification (WQC) under Section 401 of the
Clean Water Act for #COE-2015-0017 Nationwide Permits (NWP)

Dear Ms. Bathke:

The Lac du Flambeau Band of Lake Superior Chippewa Indians Natural Resources Program has reviewed the Corps letter dated January 24, 2017, requesting a water quality certification under 401 of the Clean Water Act. The Lac du Flambeau Band of Lake Superior Chippewa Indians deny without prejudice, certification of the Corps Nationwide Permit (NWP), general conditions, and definitions.

If you have any questions about the Tribe's denial, or if you require further information, please let us know. The contact person on the Tribe's staff regarding this matter is Jason De Vries, who can be reached at (715) 588-4162.

Sincerely,

Joseph Wildcat, Sr., LdF Tribal President

**Coastal Zone Consistency
Determination for Activities in and
along the coast of Lake Superior in
Minnesota**

Issued by the Minnesota Department of
Natural Resources



**DEPARTMENT OF
NATURAL RESOURCES**

MINNESOTA DEPARTMENT OF NATURAL RESOURCES
NORTHEASTERN REGION
EWR Two Harbors Area
1568 Highway 2
Two Harbors, MN 55616
218-834-1441

April 20, 2017

Chad Konickson
Chief, Regulatory Branch
Department of the Army
St. Paul District, Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, MN, 55101-1678

Dear Mr. Chad Konickson,

The State of Minnesota has completed review of the U.S. Army Corps of Engineers' proposal to re-issue Section 404 Nationwide Permits, general conditions, and definitions with some modifications in Minnesota as posted for public notice in Vol. 82, No. 4 of the *Federal Register*, dated Friday, January 6, 2017. The proposed project was also described in your consistency determination letter submitted to our office for review dated January 24, 2017.

Minnesota's Lake Superior Coastal Program (MLSCP), as the lead coastal agency pursuant to section 306(c) of the federal CZMA (16 U.S.C., section 1456(c)) and State of Minnesota Executive Order 99-12, hereby notifies the Corps of Engineers that the State of Minnesota, based on review by the Minnesota Department of Natural Resources, Division of Ecological and Water Resources (EWR), supports the proposal as described in the 1/24/2017 letter and the 1/6/2017 public notice. Therefore, the State agrees that the proposed reissuance of Nationwide Permits, general conditions, and definitions with some modifications in Minnesota is consistent to the maximum extent practicable with Minnesota's Lake Superior Coastal Program (MLSCP). You may proceed immediately with the re-issuance of the NWP's.

If you have any questions about our position or findings, please call me.

Sincerely,

Cliff Bentley
MLSCP Federal Consistency Coordinator

Electronic copy sent to:

Jill Bathke, USACOE
Doug Norris, MNDNR
Kevin Mixon, MNDNR
Amber Westerbur, MLSCP



**401 Water Quality Certification DENIAL
for the Sokaogon Chippewa Community
Reservation in Wisconsin**

AND

**401 Water Quality Certification for
NWPs 20, 37 and 38 (only) on the
Sokaogon Chippewa Community
Reservation in Wisconsin**

Issued by the Sokaogon Chippewa
Community



Sokaogon Chippewa Community

3051 Sand Lake Road, Crandon, WI 54520

Phone 715-478-7500 • Fax 715-478-5275

www.sokaogonchippewa.com



April 18, 2017

Chad Konickson
U.S. Army Corp of Engineers
St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

Re: Request for Clean Water Act Section 401 Certification for the U.S. Army Corps of Engineers, 2017 Nationwide Permits.

Dear Mr. Konickson,

The Sokaogon Chippewa Community, Natural Resources Board, has completed our review and public notice process regarding your request regarding the U.S. Army Corps of Engineers reissuance of the Nationwide Permits, general conditions, and definitions with some modifications

The Natural Resources Board has made a decision on April 18, 2017 to deny the Section 401 certification for the Nationwide Permits for the following reason:

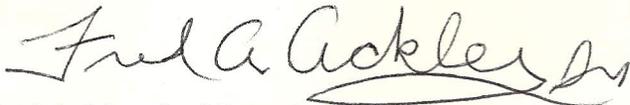
1. In our water quality standards we have Outstanding National Resource Water and Exceptional High Quality Water anti-degradation classification which prohibits direct discharges to surface waters within reservations boundaries. We felt the general permit would not be consistent with the way we intend to implement our water quality standards and administrative ordinance. Therefore, we prefer to evaluate all future projects on a case-by-case basis, and apply for individual NPDES permits if necessary;

However, we will grant certification for nationwide permit, number 20-Response Operations for Oil and Hazardous Substances, 37-Emergency Watershed Protection and Rehabilitation and 38-Cleanup of Hazardous and Toxic Waste.

Ga-na-waji Ga-wi-nug Way-ji-mooki-ji-wung Yi-ewe-meing-gun-a-sepii

If you have any questions please feel free to contact Tina L. Van Zile, Environmental Program Director at 715-478-7605.

Miigwech,



Fred Ackley, Jr., Natural Resources Board Member



Gloria Toyabo II, Natural Resources Board Member



George Van Zile Jr., Natural Resources Board Member



Ron Quade, Natural Resources Board Member

Cc: Chris McGeshick, Sokaogon Chippewa Tribal Chairman
Tina L. Van Zile, Environmental Program Director