



THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org

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MAR 14 2012



A People of Vision

A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

March 2, 2012

Mr. Allan Steinle
Department of the Army
Corps of Engineers, Omaha District
Helena Regulatory Office
10 West 15th Street, Suite 2200
Helena MT 59626

TRIBAL COUNCIL MEMBERS:

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Re: Nationwide Permit Section 401 Water Quality Certification

Dear Mr. Steinle,

The Confederated Salish and Kootenai Tribes Natural Resource Department is responding to the Corps of Engineers' request for Section 401 Water Quality Certification on Nationwide Permits (NWP's), general conditions and definitions with some modifications published on February 21, 2012, in addition to two new NWP's, three new general conditions and three new definitions. Pursuant to 40 CFR Part 121 and Section 401 of the Clean Water Act the Department has reviewed the proposed Nationwide Permits for 2012 and have denied or waived 401 Certification based upon potential impacts to Water Quality on the Flathead Indian Reservation. The Department's Section 401 Certification decisions are listed below.

Denied: The Department denies 401 Certification on NWP's

3. Maintenance
6. Survey Activities
7. Outfall Structures and Associated Outfall Structures and Associated Intake Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
21. Surface Coal Mining Activities

22. Removal of Vessels
23. Approved Categorical Exclusions
25. Structural Discharges
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
31. Maintenance of Existing Flood Control Facilities
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
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects

These permits are denied because the associated activities have the potential to violate Confederated Salish and Kootenai Tribes Water Quality Standards.

Waived: The Department waives 401 Certification of NWP's,

1. Aids to Navigation
2. Structures in Artificial Canals
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices
5. Scientific Measurement Devices
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
15. U.S. Coast Guard Approved Bridges
24. Indian Tribe or State Administered Section 404 Programs
30. Moist Soil Management for Wildlife
32. Completed Enforcement Actions
34. Cranberry Production Activities

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For all NWP's issued within the exterior boundaries of the Flathead Indian Reservation the Department requests a copy of the 404 application and a 401 Water Quality Certification. On Nationwide permits that have been denied the Department will review the proposed permit activity and issue a project-specific 401 Certification decision on each permit. On NWP's that have been waived the Department would like notification of such activities.

The Department withholds Section 401 Water Quality Certification on Nationwide permit 26 Reserved. If the Corps proposes a new Nationwide Permit 26, the Department will make a 401 Certification decision at that time upon notification and request from the Corps.

If you have any questions regarding the 401 Certification, please contact me (675-2700 ext.7263) or Clint Folden, Water Quality Regulatory Specialist at (675-2700 ext. 7255). Thank You.

Sincerely,



Rich Janssen,
Natural Resources Department Head

Cc: Mike Durglo, Division of Environmental Protection
Paula Webster, Water Quality Program
Dan Lipscomb, Shoreline Office Administrator
John Carter, Tribal Attorney
Clint Folden, Water Quality Regulatory Specialist

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