

**U. S. Environmental Protection Agency Region 4 Clean Water Act Section 401
Water Quality Certification for the Proposed Re-Issuance of the
U.S. Army Corps of Engineers' CWA Section 404 Nationwide Permits
On Behalf of Mississippi Band of Choctaw Indians**

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers (Corps) CWA 404 Nationwide Permit (NWP) into waters of the United States that occur within applicable tribal lands for the Mississippi Band Choctaw Indians (MBCI): NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, A, B, C, D and E.

Section 401(a)(1) of the Clean Water Act requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that potential discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. In this case, the MCBI does not have the authority to provide CWA Section 401 certification for discharges occurring on applicable tribal lands, therefore, the EPA is making the certification decisions for potential discharges that may result from the projects authorized under the proposed Corps CWA 404 NWP listed above.

Project Description

The Corps is proposing to re-issue its existing NWP and associated general conditions and definitions, with some modifications. The Corps states that it is “proposing these modifications to simplify and clarify the NWP, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWP authorize only activities with no more than minimal individual and cumulative adverse environmental effects.” 85 FR 57298. For more details: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

General Information

The general information provided in this section does not constitute a certification condition(s).

- Project proponents for potential projects authorized under the NWP are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.
- Project proponents for potential projects authorized under the NWP should retain this certification in their files with the applicable NWP as documentation of EPA certification for the above-referenced proposed NWP. This certification is specifically associated with the proposed NWP described above and expires when those NWP expire, five years from Corps issuance date.
- Copies of this certification must be kept on the job site and made readily available for reference.
- Prior to work commencing, project proponents for potential projects should notify the appropriate MBCI Environmental Director and EPA Region 4. EPA Region 4 and the MCBI Environmental Director should also be notified if spills or unauthorized discharges occur during the project.
- The project proponents for potential projects authorized under a NWP are encouraged to contact EPA Region 4 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures,

use of erosion control fabric, and suitable materials as defined in General Condition 6) and resources that can assist with compliance.

- Pursuant to CWA Section 308(a), EPA representatives are authorized to inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.
- If you have any questions regarding the certification, please contact 401-R4notices@epa.gov or woods.diana@epa.gov.

Certification Granted

On behalf of the MBCI, CWA Section 401 certification, for the following proposed NWPs, is granted with no additional conditions. EPA Region 4 has determined that any discharge that could be authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 CFR 121.1(n).

NWPs: 1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 32, 33, 34, 35, 36, 37, 38, 45, 49, 54

Certification Conditioned (NWPs 3, 13, 31, 41, 46)

On behalf of the MBCI, EPA Region 4 has determined that any discharge authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to Section 401(d).

NWPs 3, 13, 31, 41, and 46. Notice to EPA

Condition: All applicants must provide notice to EPA Region 4 prior to commencing construction to provide EPA Region 4 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to Region 4. EPA Region 4 will provide written notification to the applicant if the proposed project will violate the water quality certification of the NWP.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to provide EPA Region 4 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 4 to be provided any changes in the project design, scope, amount and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).

Citation(s) that authorizes this condition: 40 CFR 121.11(a).

NWP 31. Maintenance of Existing Flood Control Facilities

Condition: Control of Solid Waste- No debris, refuse, or other solid waste, including sand, cement, concrete, oil or petroleum, or other construction related wastes, shall be allowed to enter, or be stored where they may enter into, waters of the United States. Conducting maintenance activities under dewatered conditions or during low-flow periods whenever possible is recommended, which reduces the likelihood that debris, refuse or other solid waste will be released into the water column.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to prevent solid waste from entering water of the United States within the borders of the MBCI reservation.

Citation(s) authorizing this condition: § 21-1-1, 21-1-7(17), 21-1-11 of the MBCI Tribal Code

NWP 41. Reshaping Existing Drainage Ditches

Condition: Sidecast Materials - Sidecast materials from excavation activities under this NWP shall be stored and/or disposed of within upland areas only, and will not be placed in areas where they may become point source discharges into waters of the United States.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to prevent solid waste from entering water of the United States within the borders of the MBCI reservation. Point source discharges of sidecast materials into a water of the United States could have impacts on water quality by introducing excessive amounts of sediment. Sediment is a major cause of non-attainment of the Aquatic Life support designated use in the Pearl River watershed. Assurance that fills under NWP 41 will have only de minimis impacts and meet water quality requirements hinges on there being best management practices in place to designate appropriate upland disposal locations for sidecast materials excavated from drainage ditches, as well as planning/measures to ensure that there will be no point source discharges into waters of the U.S. over time.

Citation(s) authorizing this condition: § 21-1-1, 21-1-7(17), 21-1-11 of the MBCI Tribal Code

NWP 46. Discharges into Ditches

Condition: Control of Solid Waste - No debris, refuse, or other solid waste, including sand, cement, concrete, oil or petroleum, or other construction related wastes shall be allowed to into, or be stored where it may enter into waters of the United States.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to prevent solid waste from entering water of the United States within the borders of the MBCI reservation.

Citation(s) authorizing this condition: § 21-1-1, 21-1-7(17), 21-1-11 of the MBCI Tribal Code

Certification Denied (NWP 29, 39, 40, 42, 43, 44, 50, 51, 52, 53, C, D, E)

On behalf of MBCI, EPA Region 4 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 29, 39, 40, 42, 43, 44, 50, 51, 52, 53, C, D, and E, and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, in a tribal jurisdiction where EPA is not the regulator, EPA lacks important information about tribal water resources. In the case of MBCI, EPA Region 4 lacks sufficient information on sensitive resources that may exist on these tribal lands, the extent of impaired waters on these tribal

lands, and potential cultural importance of the water resources on these tribal lands. MBCI's parcels are distributed within 14 counties in a checkerboard pattern, and approximately two-thirds of the lands are in Neshoba County, the headwaters for the Pearl River watershed. Additional information on these specific subjects would be needed for EPA Region 4 to assure that the range of discharges from potential projects authorized under NWPs 29, 39, 40, 42, 43, 44, 50, 51, 52, 53, C, D, and E will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 4 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 4 is therefore denying certification.

Certification Waived (NWP 8, 9, 15, 26, 47, 48, 54, A, B)

Section 401 Certification is expressly waived for the following NWPs, which are either unlikely to occur on MBCI tribal lands, or unlikely to result in discharges into waters of the U.S. on MBCI tribal lands.

NWPs: 8, 9, 15, 26, 47, 48, 54, A, B