



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 02 2017

Colonel Michael C. Derosier  
District Commander  
U.S. Army Corps of Engineers  
4155 Clay Street  
Vicksburg, Mississippi 39183-3435

**SUBJECT: Conditional Clean Water Act Section 401 Certification of the 2017 Nationwide Permits for Activities on Tribal Lands of the Mississippi Band of Choctaw Indians**

Dear Colonel Derosier:

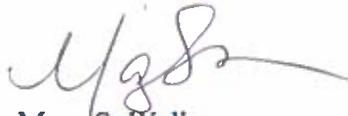
The U.S. Environmental Protection Agency, Region 4 has responsibility under section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits or licenses issued for activities on Mississippi Band of Choctaw Indian (MBCI) tribal lands. The EPA has reviewed the U.S. Army Corps of Engineers (Corps) January 6, 2017, Federal Register notice announcing the reissuance of the Corps' CWA section 404 nationwide permits (NWP), and is transmitting its conditional water quality certification for these general permits, as applicable on MBCI lands. The enclosed certification conditions become binding requirements of any NWP issued for work on MBCI lands. The EPA would appreciate the Corps having its regulatory staff distribute the conditional certification document to anyone contacting the Corps with applicable projects.

Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, the EPA sent a letter dated February 2, 2017, to the MBCI, offering to consult on the draft certification conditions. The EPA also communicated with Mr. Jerry Cain, Environmental Manager for the MBCI, about the certification conditions through email and teleconferences between January 24, 2017, and February 28, 2017. Mr. Cain expressed support of the certification conditions and the EPA's approach to ensuring that activities under the new NWPs have no more than negligible impacts on water quality. The finalized certification conditions were forwarded to Mr. Cain on February 24, 2014, and the EPA's formal consultation with the MBCI on this matter ended on February 28, 2017. The enclosed conditional certification will remain in effect for the five-year authorization period of the 2017 NWPs, which will begin on March 19, 2017.

Thank you to you and your staff for your ongoing partnership in implementing the CWA section 404 regulatory program. Please contact me at (404) 562-9345 with any questions regarding this conditional

certification, or have your staff contact Ms. Diana Woods of my staff at (404) 562-9404 or woods.diana@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. S. Walker', with a long horizontal flourish extending to the right.

Mary S. Walker  
Director  
Water Protection Division

Enclosure

cc: Honorable Phyliss J. Anderson, Chief, MBCI  
Mr. Jerry Cain, P.E., Environmental Manager, MBCI  
Ms. Jennifer Mallard, Chief, Regulatory Branch, Vicksburg District Corps

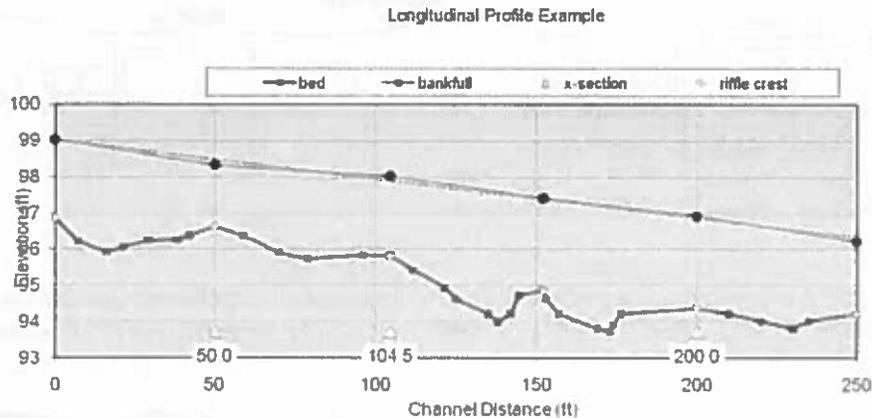
## Conditional Section 401 Water Quality Certification of the 2017 Nationwide Permits for Activities on Mississippi Band of Choctaw Indian Lands

The U.S. Environmental Protection Agency (EPA) is issuing conditional Water Quality Certification of the reauthorized 2017 Nationwide Permits (NWP) for regulated activities on Mississippi Band of Choctaw Indian lands. EPA certifies that the activities specified in the NWP will comply with the applicable provisions of Clean Water Act sections 301, 302, 303, 306, and 307, provided they are conducted in accordance with the following conditions:

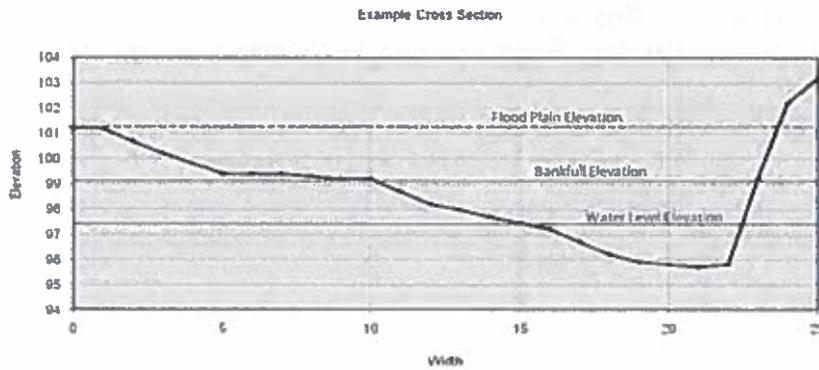
### 1. Projects with Culverted Crossings

Please note that activities under many of the NWP may involve culverted crossings. The following applies to any such project. All pre-construction notifications (PCNs) for projects with a culverted crossing of a stream shall provide the following information:

- a. Culvert type and dimensions.
- b. Depth to which the culvert inlet and outlet culvert will be embedded in the stream bottom.
- c. Designed culvert slope along the stream channel.
- d. A profile of the stream bottom (longitudinal profile) beginning at least 50 feet upstream of the culvert inlet and continuing at least 50 feet downstream of the culvert outlet. Profile measurements shall begin at the head of a riffle and end at the head of a riffle. The change in elevation from head of riffle to head of riffle can be used for the designed slope.



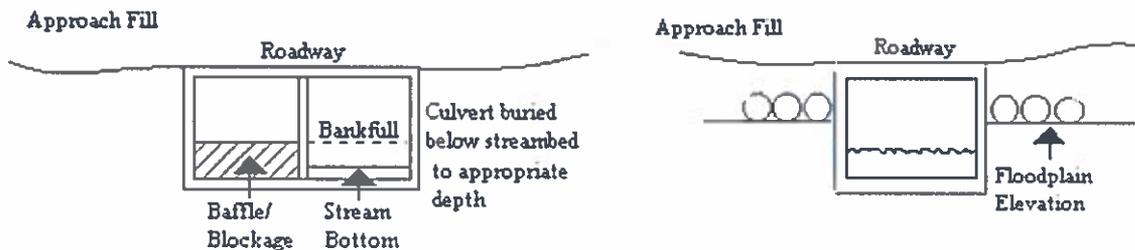
- e. Three cross-sectional scale diagrams of the stream channel and banks measured at the beginning, middle, and end of the proposed culvert location. The cross-sections shall depict the stream width and height at the current water elevation, bank-full elevation and flood-plain elevation. Calculate bank-full cross-sectional area at all 3 cross-sections.



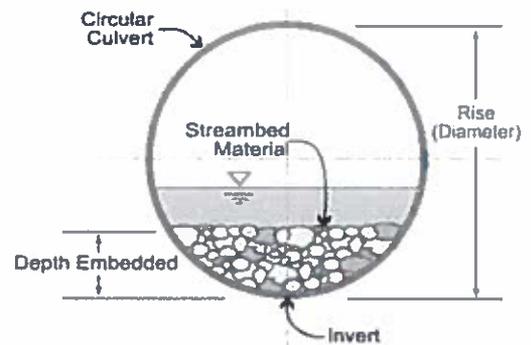
## 2. Culvert Restrictions

Please note that activities under many of the NWP's may involve culverted crossings. The following applies to any such project. These restrictions are limited to the protection of aquatic resources and do not supersede any design or safety requirements applicable to culverted crossings.

- a. The width of the base flow culvert(s) shall be approximately equal to the average channel width. Culvert(s) shall not permanently widen/constrict the channel or reduce/increase stream depth. Multiple pipe culverts may not be used to receive base flows.
- b. Bank-full flows shall be accommodated through maintenance of the existing bank-full cross-sectional area.



- c. The upstream and downstream invert of culverts (except bottomless culverts) installed in perennial streams will be buried/embedded to a depth of 20% of the culvert height, or sufficient to allow natural substrate to



colonize the structure's bottom and encourage fish movement.

- d. Culvert slope shall be consistent with average stream segment slope, but shall not exceed 4 percent.

- e. Culverts shall be of adequate size to accommodate flooding and sheet flow in a manner that does not cause flooding of associated uplands or disruption of hydrologic characteristics that support aquatic sites on either side of the culvert.
- f. Where adjacent floodplain is available, flows exceeding bankfull shall be accommodated by installing equalizer culvert at the floodplain elevation.
- g. Unless specifically described in the PCN, use of undersized culvert to attain stormwater management or waste treatment is not authorized.

### 3. Storm Water Detention/Retention

NWPs cannot be used to authorize a storm water detention/retention facility in perennial or intermittent streams. A Department of the Army standard permit application is required for these projects.

A PCN for a project that includes the construction of a storm water detention/retention facility (e.g., NWP 43 or otherwise included) in waters of the U.S. shall also include the following information:

- a. A clear statement of the basic (primary) purpose of the detention/retention facility.
- b. A description of the upland-based facility/system that will be utilized to pretreat storm water prior to discharge into the in-stream/wetland detention/retention facility.
- c. A detailed alternatives analysis pursuant to the Section 404(b)(1) Guidelines of the Clean Water Act (CWA). This analysis must demonstrate that all other available stormwater and sediment/erosion treatment controls will be implemented and that in-stream detention/retention is the only available practicable alternative that would meet the basic project purpose. This analysis shall also include all project site specific factors that may render other stormwater detention/retention measures impractical, such as: steep slopes; rock substrate; narrow floodplain; and pre-existing development.
- d. An assessment of the potential for secondary effects of the proposed discharge (e.g., upstream and downstream of the storm water detention/retention facility).

### 4. Utility Line Activity

For the purpose of calculating cumulative loss of waters of the U.S. resulting from utility line projects, the geographic area of consideration will be an individual 8-digit U.S. Geological Survey (USGS) hydrologic unit watershed ("HUC-8"). The total loss of waters of the U.S. resulting from utility line projects in an 8-Digit Hydrologic Unit cannot exceed 10 acres of wetlands and/or 1500 linear feet of stream.

For NWP 12, excavated material that is temporarily side cast in waters of the U.S. shall be returned to the trench or removed within 60 days, unless a 30-day extension is requested and approved by the District Engineer, or his assigned delegate.

For NWP 12 in wetlands, excavated material shall be returned to the trench and any remaining material shall be relocated to an approved disposal site. Substrate containing roots, rhizomes, seeds, etc., must be kept viable and replaced at the surface of the excavated site. Stream banks that are cleared of vegetation shall be stabilized with deep-rooted native species similar to nearby reference sites. Each individual wetland/stream project shall be stabilized immediately following completion of utility line placement at that project.

A PCN for utility line activity must include the following information:

- a. A map depicting all waters of the U.S. located in or directly adjacent to the right-of-way of the total linear project. (NOTE: The term total linear project is discussed in the NWP definition of “single and complete linear project.” For the purposes of this conditional certification, examples of a total linear project include, but are not limited to: a new bypass highway that begins along a highway on the east side of an urban area and terminates along the same highway on the west side of the urban area; an aerial transmission line that begins at an existing substation and terminates at a new industrial park; and a buried sewer line that begins at a new subdivision and terminates at an existing sewer main.)
- b. A map depicting the location of each “single and complete linear project” and all other work occurring in waters of the U.S. along the right-of-way for the total linear project. This map shall clearly identify the type of work that would occur in waters of the U.S.
- c. A description of all work and resulting losses of and/or impacts to waters of the U.S. as identified at 4b above.

#### 5. Linear transportation projects

For the purpose of calculating cumulative loss of waters of the U.S. resulting from the construction of a linear transportation project, the geographic area of consideration will be an individual USGS HUC-8. The total loss of waters of the U.S. resulting from a linear transportation project in an 8-Digit Hydrologic Unit cannot exceed 10 acres of wetlands and/or 1500 linear feet of stream.

A PCN for a linear transportation project must include the following information:

- a. A map depicting all waters of the U.S. located in or directly adjacent to the right-of-way of the total linear project. (NOTE: The term total linear project is discussed in the NWP definition of “single and complete linear project.” For the purposes of this conditional certification, examples of a total linear project include, but are not limited to: a new bypass highway that begins along a highway on the east side of an urban area and terminates along the same highway on the west side of the urban area; an aerial transmission line that begins at an existing substation and terminates at a new industrial park; and a buried sewer line that begins at a new subdivision and terminates at an existing sewer main.)
- b. A map depicting the location of each “single and complete linear project” and all other work occurring in waters of the U.S. along the right-of-way for the total linear project. This map shall clearly identify the type of work that would occur in waters of the U.S.
- c. A description of all work and resulting losses of and/or impacts to waters of the U.S. as identified at 5b above.

#### 6. NWPs involving dredging

A PCN for use of NWPs 3(b), 19, 35, and 53 must include a Tier I evaluation, in accordance with the Inland Testing Manual. The Tier I evaluation must contain adequate information necessary to document whether there is “reason to believe” that the material to be dredged may be contaminated. If the District determines that Tier II testing is necessary, the PCN will not be considered complete until a Tier II testing report is submitted. The Inland Testing Manual is available at <https://www.epa.gov/cwa-404/inland-testing-manual>.

#### 7. Restoration of Temporary Construction, Access, and Dewatering

A PCN for use of NWP 33 will be required for projects impacting CWA Section 404 waters and the PCN must include a restoration plan.

## 8. Impacts to Compensatory Mitigation Sites

NWPs cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank, unless that project's purpose is to enhance the mitigation site or bank. A Department of the Army standard permit application is required for these projects.

## 9. Uncured Concrete

No work shall be conducted under any NWP that requires discharge of wet or otherwise uncured concrete below the ordinary high water mark, unless the concrete is contained within waterproof forms until the concrete cures.

## 10. Impact Limits and Calculations

All impacts to wetlands and open waters must be calculated and reported in acres. Stream impacts must be calculated separately and reported in both linear feet and acres (average width x linear feet) to determine the total loss of waters which should not exceed the acreage limit for the NWP. Limits on loss of stream in terms of linear length also apply.

## 11. Residential Developments

NWP 29 shall not be used to impound waters (e.g., for creation of aesthetic or recreational ponds or lakes).

## 12. Bank Stabilization

A PCN shall be required for all projects seeking authorization under NWP 13. PCNs must include the following information:

- a. Habitat type along the shoreline;
- b. Presence of stabilization structures in the vicinity of the project;
- c. Cause/s, extent, and rate of erosion;
- d. Site specific information which may include: shoreline orientation, slope, bank height, tidal range, nearshore bathymetry, fetch, substrate stability, etc.;
- e. Rationale for selecting the preferred stabilization technique. (Note: The Mississippi Department of Marine Resources' "Alternative Shoreline Management Guidebook" contains information on the pros and cons of different stabilization techniques and recommended design considerations that may be helpful in identifying the least environmentally damaging technique that would achieve adequate stabilization after considering site specific information.)
- f. Structural materials toxic to aquatic organisms shall not be used. If stone is proposed, only clean stone, free of exposed rebar, asphalt, plastic, soil, etc., may be used.
- g. Filter fabric or similar material should be used as appropriate when stone or other heavy material is proposed, to control scour and erosion. This requirement is limited to the protection of aquatic resources and does not supersede any design or safety requirements applicable to bank stabilization projects.

### 13. NWP 53 Removal of Low-Head Dams

The following conditions apply to NWP 53. EPA believes that removal of low-head dams, especially in the southeastern United States, may in some cases have the potential to cause more than minimal adverse environmental impacts without careful evaluation of site specific conditions. In addition to quantification of the volume of sediment stored upstream of the dam, the PCN for use of NWP 53 will include:

- a. Estimation of geomorphic changes in the stream, including but not necessarily limited to the degree of anticipated channel incision through sediments stored upstream of the dam;
- b. Delineation of all jurisdictional waters of the U.S. in the project area (e.g. longitudinal extent of normal pool) and anticipated effects of incision in the main-stem and its tributaries on adjacent wetlands;
- c. Tier I (and potentially Tier II) assessment of potential contaminants in the sediment stored upstream of the dam, consistent with the Inland Testing Manual (EPA/Corps, 1998), if there is a reason to believe contaminants could be present in the stored sediment;
- d. Assessment of the potential to minimize adverse downstream effects by removing sediment stored behind the dam as an alternative to leaving those sediments in place during and following dam removal;
- e. Anticipated effects on water quality upstream and downstream of the dam;
- f. Baseline assessment of biological communities upstream and downstream of the dam, including the presence of unique or high quality biological communities or species of special concern;
- g. The upstream extent of such investigations should extend as far as the upstream limits of normal pool,
- h. The downstream limits should extend through the anticipated zone of sediment deposition following removal of the structure;
- i. Anticipated effects on biological communities upstream and downstream of the dam.