New York State Department of Environmental Conservation
Division of Environmental Permits, 4th Floor
625 Broadway, Albany, NY 12233-1750
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Joe Martens
Commissioner

April 19, 2012

Richard Tomer, Chief
Regulatory Branch
New York District, Corps of Engineers
Jacob K. Javits Federal Building
26 Federal Plaza
Room 1937
New York, NY 10278-0090

Diane Kozlowski, Chief
Regulatory Branch
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Re: **Section 401 Water Quality Certification**
USACOE Nationwide Permits
Effective Date: April 20, 2012
Expiration Date: April 19, 2017

Dear Mr. Tomer and Ms. Kozlowski:

This constitutes the New York State Department of Environmental Conservation Section 401 Water Quality Certification (WQC) for the US Army Corps of Engineers Nationwide Permits (NWPs), and the Regional Conditions issued by the Corps' New York and Buffalo Districts. The Nationwide Permits were published in the *Federal Register* on February 21, 2012, and became effective March19, 2012.

This Certification is organized as follows:

List 1 – Nationwide Permits requiring no Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899
List 2 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets **all** the required General Conditions
List 3 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets specific conditions **and** the required General Conditions
List 4 – Nationwide Permits denied Water Quality Certification

List 1- Nationwide Permits requiring no Water Quality Certification because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899:

NWP 1. Aids to Navigation
NWP 2. Structures in Artificial Canals
NWP 8. Oil and Gas Structures on the Outer Continental Shelf
NWP 9. Structures in Fleeting and Anchorage Areas
NWP 10. Mooring Buoys
NWP 11. Temporary Recreational Structures
NWP 24. Indian Tribe or State Administered Section 404 Programs
NWP 28. Modifications of Existing Marinas
NWP 35. Maintenance Dredging of Existing Basins

List 2 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets all the required General Conditions:

The Nationwide Permits listed below are hereby granted Section 401 Water Quality Certification in New York State provided that the project complies with the General Conditions. Any party conducting the activities authorized by these NWPs that cannot comply with these conditions must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation.

NWP 3. Maintenance
NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
NWP 5. Scientific Measurement Devices
NWP 6. Survey Activities
NWP 13. Bank Stabilization
NWP 14. Linear Transportation Projects
NWP 15. U.S. Coast Guard Approved Bridges
NWP 16. Return Water from Upland Contained Disposal Areas
NWP 18. Minor Discharges
NWP 19. Minor Dredging
NWP 20. Response Operations for Oil and Hazardous Substances
NWP 22. Removal of Vessels
NWP 23. Approved Categorical Exclusions
NWP 29. Residential Developments
NWP 30. Moist Soil Management for Wildlife
NWP 31. Maintenance of Existing Flood Control Facilities
NWP 32. Completed Enforcement Actions
NWP 33. Temporary Construction, Access, and Dewatering
NWP 34. Cranberry Production Activities
NWP 36. Boat Ramps
NWP 37. Emergency Watershed Protection and Rehabilitation
NWP 39. Commercial and Institutional Developments

NWP 42. Recreational Facilities
NWP 45. Repair of Uplands Damaged by Discrete Events

Required General Conditions

1. *Non-contamination of Waters*
   - All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

2. *Installation and Maintenance of Culverts*
   - This certification does not authorize the installation of any culverts that are not embedded beneath the existing grade of the stream channel.
   - This certification does not authorize culvert rehabilitation projects that involve slip lining, invert paving, or similar treatments that can result in an impediment to the passage of aquatic life movement through the culvert.
   - This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.

3. *Discharges and Disturbances*
   - Except for Nationwide Permit # 3, 4, 20, 22, 27, 30, 33, 37, 41 and maintenance activities under Nationwide Permit 43, this certification does not authorize discharges greater than 1/4 acre in size or more than 300 feet of stream disturbance.

4. *Maintenance of Water Levels*
   - Except for Nationwide Permit 27, this certification does not authorize any activity that results in a permanent water level alteration in waters of the United States, such as draining or impounding.

5. *Dewatering.*
   - Authorized dewatering is limited to immediate work areas that are cofferdammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed, or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.
   - Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.
   - All dewatering structures must be permanently removed when construction is completed.

6. *Endangered or Threatened Species*

- Applicants must certify that the proposed activity will not jeopardize the existence of an endangered species or threatened species listed in 6 NYCRR Part 182, or likely to destroy or adversely modify the habitat of such species. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at http://www.dec.ny.gov/animals/29338.html. If it is determined that there is a species of concern that may be impacted by the proposed activity, this blanket water quality certification is not applicable, and the applicant will need an individual water quality certification from the Department.

7. *Prohibition Period for In-stream Work*

Unless approved in writing by the Regional Natural Resources Supervisor or their designee, in-stream work is prohibited during the following time periods:

- in cold water trout fisheries (waters classified under Article 15 of New York's Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31
- in perennial warm water fisheries, (non- trout waters classified under Article 15 of New York's Environmental Conservation Law as "A, B or C"), beginning March 1 and ending July 15.

To determine which prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate DEC regional office.

8. *Significant Coastal Fish and Wildlife Habitat*

- This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 ; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

9. *Coastal Erosion Hazard Areas*

- This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in NYS Environmental Conservation Law (ECL) Article 34, and its implementing regulations, 6 NYCRR Part 505.

10. *State-owned Underwater Lands*

- Prior to undertaking any Nationwide Permit activity that will involve or occupy state-owned lands now or formerly under the waters of New York State, the party proposing the activity must first obtain all necessary approvals from:

NYS Office of General Services
Division of Real Estate Development
Corning Tower Building, 26th Floor
Empire State Plaza

Albany, NY 12242
Tel. (518) 474-2195

11. *Tidal Wetlands*
- This authorization does not authorize any activities in tidal wetlands as defined in Article 25 of NYS ECL, with the exception of NWP # 4, 20 and 48.

12. *Wild, Scenic and Recreational Rivers*
- This certification does not authorize activities in any Wild, Scenic or Recreational River or state designated WSR corridors.

13. *Floodplains*
- Authorized projects must be in compliance with State and Local Floodplain Regulations.

14. *Combined use of permits*
- This authorization does not allow the stacking of NWPs so that in combination they exceed 1/4 of an acre of fill or 300 linear feet of stream disturbance. When used in combination, the most restrictive conditions apply.

15. *Public Service Commission.*
- This certification does not authorize activities regulated pursuant to Article VII of the New York State Public Service Law. For such projects, Section 401 Water Quality Certification is obtained from the New York State Public Service Commission.

16. *Utility Projects*
- This certification does not authorize maintenance or other activities associated with hydro power projects.
- This certification does not authorize the construction of substation facilities or permanent access roads in wetlands or within the FEMA mapped 100 year floodplain.
- Excess materials resulting from trench excavation must be moved out of the wetland and contained so that they do not re-enter any waters of the United States.

List 3 – Blanket Water Quality Certification is granted for these Nationwide Permits provided the project meets specific conditions and the required General Conditions:

The Nationwide Permits listed below are hereby granted Section 401 Water Quality Certification in New York State provided that the project complies with the required General Conditions listed under List 2 **and** the designated Special Conditions specific to each of the following NWPs. Any party conducting the activities authorized by these NWPs that cannot comply with either the General or Special Conditions must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation.

NWP 7. Outfall Structures and Associated Intake Structures
NWP 12. Utility Line Activities
NWP 25. Structural Discharges

NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 40. Agricultural Activities
NWP 41. Reshaping Existing Drainage Ditches
NWP 43. Stormwater Management Facilities
NWP 46. Discharges in Ditches
NWP 48. Commercial Shellfish Aquaculture Activities

Special Conditions for NWP 7. Outfall Structures and Associated Intake Structures

- The applicant must provide the location of any intake structure; the maximum design flow (in gallons per day), and velocity (in feet per second); and the name and general operational information, including design drawings of any device that is proposed to prevent impingement or entrainment of fish and wildlife.
- All intake structures constructed for the withdrawal of cooling water must adhere to the requirements of Part 316(b) of the Clean Water Act and 6NYCRR Section 704.5.

Special Conditions for NWP 12. Utility Line Activities

- Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.

Special Conditions for NWP 25. Structural Discharges

- This certification does not authorize any pile-supported structure with a surface area greater than 4,000 square feet.
- This certification does not authorize any structural support member with an area footprint greater than 64 square feet.
- This certification does not authorize piles or structural support members with spacing between such members that causes the buildup of bottom sediments due to wave action or shoreline drift.

Special Conditions for NWP 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

- This certification authorizes only restoration projects conducted with oversight by a federal or state natural resource agency, or a County Soil and Water Conservation District.
- This certification does not authorize demonstration projects larger than one acre of waters of the United States.
- This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
- This certification does not authorize the conversion of one wetland type to another or the conversion of lotic communities to wetland or lentic communities.

Special Conditions for NWP 40. Agricultural Activities

- This certification does not authorize any discharges of dredged or fill material into streams. Alteration of natural stream courses is not included in this certification.
- Only buildings necessary for the agricultural productivity of farmland are certified. This certification does not cover farm buildings such as roadside stands.
- This certification does not authorize construction of ponds in wetlands.

Special Conditions for NWP 41. Reshaping Existing Drainage Ditches

- Sidecast organic soils may not be stacked deeper than 18 inches or in such a way as to interfere with surface water flow.
- This certification does not authorize sidecasting of non-organic soils into wetlands.
- This certification does not authorize in-stream channel re-shaping of Waters classified as A,B, or C under Article 15 of New York's Environmental Conservation Law,

Special Conditions for NWP 43. Stormwater Management Facilities

- This certification does not apply to new Stormwater Management Facilities located within waters of the US, for projects that will cause an acre or more of ground disturbance and will require coverage under a stormwater SPDES permit.
- This certification does applies to the maintenance of existing storm water management facilities up to1/2 acre or 300 feet in length

Special Conditions for NWP 46. Discharges in Ditches

- This certification is not valid if the current ditch is currently a wetland area or connected to a federal or state designated wetland.

Special Conditions for NWP 48 Commercial Shellfish Aquaculture Activities

- This certification does not authorize the expansion of aquaculture activities into new areas of a project.

List 4 - Permits denied Section 401 Water Quality Certification:

The Nationwide Permits listed below are hereby denied Section 401 Water Quality Certification in New York State. Any party conducting the activities authorized by these NWPs must apply for and obtain an individual Section 401 Water Quality Certification from the New York State Department of Environmental Conservation.

NWP 17. Hydropower Projects
NWP 21. Surface Coal Mining Activities
NWP 38. Cleanup of Hazardous and Toxic Waste
NWP 44. Mining Activities
NWP 49. Coal Remining Activities
NWP 50. Underground Coal Mining Activities

NWP 51. Land-Based Renewable Energy Generation Facilities
NWP 52. Water-Based Renewable Energy Generation Pilot Projects

If you have any questions, please contact me at 518-402-9167.

Sincerely,

Kent P. Sanders
Deputy Chief Permit Administrator

ecc: