



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 - 2733

MAR 07 2017

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Ms. Kimberly Baggette
Chief, Regulatory Division
Galveston District, Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

RE: Certification of 2017 Nationwide Permits for use in Indian country in EPA Region 6

Dear Ms. Baggette:

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2017 nationwide permits (NWP) in Indian country where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program.

In an effort to ensure that the potentially affected tribes are fully aware of the nationwide permit program and the new 2017 NWP, EPA Region 6 contacted each tribe and requested their positive concurrence on our potential certification of the NWP. Alternatively, if a tribe did not respond, we informed them that would be interpreted as a desire to pursue individual review of these NWP activities to ensure water quality standards compliance. We were not contacted by any of the affected tribes within Galveston District in support of certification of the NWP for use on their tribal lands. Therefore, we do not certify the use of the 2017 NWP for use in Galveston District, rather, in accordance with Corps regulations at 33 CFR 330.4(c), anyone wanting to perform an activity subject to the NWP on tribal land is required to obtain an activity specific water quality certification or waiver from EPA before proceeding under the NWP.

We do not want this approach to cause significant delays in the day to day CWA Section 404 permit program that you administer. Our goal will be, once we are aware of the need for 401 certification, to complete this process in 10 days or less. We will also continuously evaluate this approach, and invite your agency to do the same, and should it create undo complications or workload burdens, we will reevaluate the process and take steps to improve it. This process has already increased the level of awareness of the 404 program by several of the tribes in EPA Region 6, and we hope to continue this trend by working with tribes more closely over time on CWA Section 404 program matters.

If you wish to discuss this approach, or when you become aware of the need for 401 certification of a potential NWP action, please contact Tom Nystrom of my staff at (214) 665-8331.

Sincerely,

A handwritten signature in black ink, appearing to read "WK Honker".

William K. Honker, P.E.
Director
Water Division