

401 Certification Information

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401 Coordinator

Water Quality-Navajo Nation EPA



NNEPA Water Quality Program

- The WQ/NPDES Program was created in October 1992 to apply for and obtain TAS for Section 106 of the CWA. EPA approved this TAS in October 1993 which allowed Navajo EPA to apply for and receive annual Section 106 grant funding to further develop CWA program capabilities and to apply for and receive more TAS approvals under the CWA.
- EPA has approved TAS for the Navajo Nation for Sections 106 (Water Pollution Control Grants), 303 (WQS), 319 (NPS), and 401 (Certification) of the CWA.
- TAS and program delegation applications for Section 402 (NPDES) are currently on-hold.



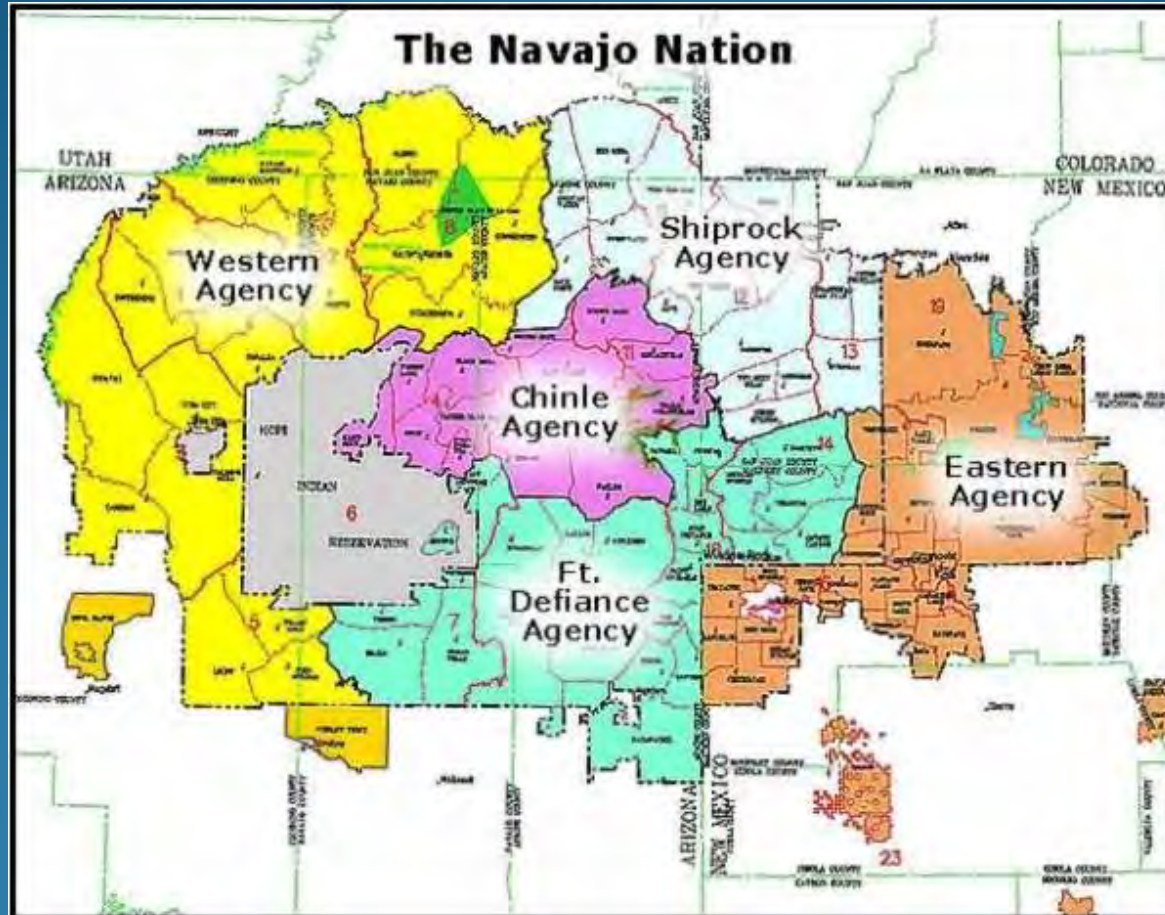
TAS Process for NN



- November 12, 1999 The Resources Committee of the Navajo Nation Council passed the Navajo Nation Surface Water Quality Standards (NNSWQS).
- November 22, 1999 Navajo EPA submitted its initial CWA Section 303 Treatment as a State (TAS) application to U.S. EPA Region 9.
- July 30, 2004 The Resources Committee of the Navajo Nation Council passed the NNSWQS Certification Regulations:

- January 20, 2006 - U.S. EPA approved the Navajo Nation's TAS application under Sections 303 & 401 of the CWA (exterior NN reservation excluding former Bennett Freeze area, trust lands in ENA, 3 satellite chapters)
- March 23, 2006 - U.S. EPA technically approved the NNSWQS allowing the operation of the 303 & 401 programs on the Navajo Nation
- July 10, 2006 - Navajo EPA issued its first 401 Certification [2006-0001WR] to the Table Top Telephone Company for a fiber-optic cable installation in Sanders, AZ.

The Navajo Nation





- NNEPA approves the TAS for all lands within
 - 1) the formal reservation excluding the former Bennett Freeze area & lands leased to the power plants
 - 2) the three satellite reservations of Alamo, Tohajiilee, and Ramah
 - 3) all tribal trust land in the Eastern Navajo Agency

Tribal Authority – Section 518(e)

- TREATMENT AS STATES.—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, **106**, **303**, **305**, 308, 309, 314, **319**, **401**, 402, 404, and 406 of this Act to the degree necessary to carry out the objectives of this section

401 Success

- Navajo Nation has the authority to permit and authorize activities on our land and within our waterbodies
- TAS allows NNEPA WQ the authority to create and implement conditions pertinent to the needs of the area
- Ability to protect the NN waterbodies and wetlands
- Mitigation projects, NNEPA WQ can voice their concerns

401 Certification Application



Navajo Nation Environmental Protection Agency (NNEPA)
Water Quality Program (WQP)

401 Water Quality Certification Application

Dredged and/or fill Material Affecting Waters of the Navajo Nation

(Please indicate tabs/exhibits if referring to additional attachments)



401 Project ID #: _____ (For NNEPA Use Only)

APPLICANT INFORMATION

Applicant Name: _____ Title: _____
 Applicant's Company, Agency, etc.: _____
 Physical Address: _____
 Applicant's Mailing Address: _____
 Email: _____ Fax #: _____
 Phone #: _____ Cell#: _____

SUBCONTRACTOR INFORMATION

Name of any Subcontractor involved in project: _____
 Address: _____ Phone #: _____
 Contact Person of Subcontractor: _____ Title: _____

PROJECT INFORMATION

Name of Project & Project Description: _____

 Activity of Project Dates (beginning to end): _____
 Location of Project (include GPS coordinates, UTM, latitude, longitude topographic map name with identifying map (1-24,000 scale)): _____

 Directions to project location (nearest highways and landmarks). Please include map(s) or drawings displaying location. _____

 Navajo Chapter(s) affected: _____
 Name of affected waterbody(ies): _____

 Estimated Quantities of Material to be Dredge (cubic yards): _____
 Source and description of fill material (acre): _____
 Total Estimated Acreage of waterbody/wetland impacted by entire project: _____
 Description of Conditions prior to construction (please include aerial, land-base photos): _____

Description of proposed Best Management Practices (BMPs)/Protective Measures to ensure protection of water quality (WQ parameters of concern), before, during, and after construction of Project (attach additional sheet if necessary): _____

ADDITIONAL INFORMATION

Respectively contacted US Army Corps of Engineers (USCOE) or other permitting agency(ies): Yes No
 If yes, name of agency, project manager and type of permit issued: _____

(Please provide NNEPA WQP a copy of all information submitted to the permitting agency)
 If no, USCOE will need to be notified before project begins. Notification will be given to NNEPA by the applicant ensuring USCOE is aware of Project.

What local, tribal, state, and/or federal agencies/departments were notified (list) along with person contacted: _____

SIGNATURE OF APPLICANT

I have reviewed the following items: Navajo Nation Surface Water Quality Standards (NNSWQS), and NNSWQS Certification Regulations. (www.navajoepa.org)

By signing this application, you certify that all information is true to the best of your knowledge and notification will be given to NNEPA/Water Quality Program if any changes or modification occur before, during, or after the proposed project. By signing this application you also consent to the jurisdiction of the Navajo Nation and the courts of the Navajo Nation regarding any matters in any way relating to this application. By signing this application you read and understand the NNSWQS.

 Signature of Applicant Date

RETURN ADDRESS

Please feel free to attach additional information that will assist in the review process. Upon Completion, mail to: NNEPA-Water Quality Program, P.O. Box 339, Window Rock, AZ 86515
 Tel: (928) 871-7690

Faxed or emailed applications are acceptable, but issuance of the 401 Certification is contingent on applicant's submittal of hard copy application with original signature.

A Mandatory 30-day Public Notice Period [§ 306 of NNSWQS Certification Regulations] is required after review and application is complete.

Any materials (construction, equipment, etc.) used for the project should not be stored within any waterbodies.

Revised: 08/09

401 Website

- NNSWQRS
- NN CWA
- 401 Application Checklist
- 401 Brochure
- Emergency 401 Procedures



401 Success

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- TAS allows NNEPA WQ the authority to create and implement conditions pertinent to the needs of the area
- Ability to protect the NN waterbodies and wetlands
- Mitigation projects, NNEPA WQ can voice their concerns

Challenges with 401

- Compliance and Enforcement
 - Regulation Standards
 - Notice of Violation
 - Collaboration with USEPA Region IX and USACOE Districts
 - Gaining Support from USACOE Districts
 - Retaining/finding funding for more 401 staff

401 Learning

- Amend our current NN Surface Water Quality Standards Certification Regulations
- Create and adopt ideas from USEPA and other tribes
 - Conditional Certs
 - Conditions geared towards cultural aspects

Who Must Apply???

- Any agency, entity, company, individual, either public, private or government proposing a project that requires a federal permit, license, and approval of discharge into “water of the US/Navajo Nation”

*Ex: Federal Government, BIA, Navajo Nation,
Environmental Consultants, Contractors, etc..*

- Dredge and fill projects within a US Water Way (Significant Nexus, tributary)
- Example: There may be a wash, arroyo, stream, creek, or drainage that your project crosses or may be impacted by your project, you may need a 401 application before the project takes place.
- 2nd Example: Road maintenance project that crosses a ephemeral wash. You will need a 401.

? Significant Nexus, Tributary?

- Tributary – a natural, man altered, or man-made water body that carries flow directly or indirectly into traditional navigable waters. (from the point of confluence, where 2 lower order streams meet to form the tributary, downstream to the point such trib enters a higher order stream.)
- Significant Nexus – a water body with a traditional navigable water if its flow characteristics & functions in combination with the ecologic & hydrologic functions performed by all wetlands adjacent to such a tributary, affect the chemical, physical, & biological integrity of a downstream traditional navigable water.

50 Nation Wide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish & Wildlife Harvesting, Enhancement & Attraction Devices
5. Scientific measurement Devices
6. Survey Activities
7. Outfall Structures & Associated Intake Structures
8. Oil & Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting & Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor discharges
19. Minor dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat restoration, Establishment, & Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood control Facilities
32. Completed enforcement actions
33. Temporary construction, Access, & Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection & Rehabilitation
38. Cleanup of hazardous & Toxic Waste
39. Commercial & 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. Pipeline Safety Program designated time Sensitive Inspections & Repairs
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

NWP predominately utilized on Navajo Nation

- NWP 3 Maintenance
- NWP 7 Outfall Structures
- NWP 12 Utility Lines
- NWP 13 Bank Stabilization
- NWP 14 Linear Transportation
- NWP 43 Stormwater Management

NWP General Conditions:

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects From Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion & Sediment Control
13. Removal of Temporary Fills
14. Proper Maintenance
15. Wild & Scenic Rivers
16. Tribal Rights
17. Endangered Species
18. Historic Properties
19. Designated Critical Resource Water
20. Mitigation
21. Water Quality
22. Coastal Zone Management
23. Regional & Case-by-Case Conditions
24. Use of Multiple Nationwide Permits
25. Transfer of Nationwide Permit Verification

Conditions continue...

- ACOE/NNEPA have authority to determine if an activity complies w/the terms and conditions of an NWP
- NWPs do not rule out the need to obtain other federal, state, tribal or local permits, approvals, or authorization required by law.
- NWPs do not grant any property rights or exclusive privileges
- NWPs do not authorize any injury to the property or rights of others
- NWPs don not authorize interference with any existing or proposed Federal Project.
- According to Colonel Michael C. Wher, PE, Division Engineer, South Pacific USACE. As of March 30, 2012 general conditions 1. *Notification:all NWP-authorized projects proceeding on tribal lands within Region 9 shall submit a form of notification to EPA*

Pre-Application Consultation

- DO I NEED A PERMIT FOR THE PROJECT THAT I WILL BE CONDUCTING???
- Pre-Application consultation: Submit a preliminary determination request to NNEPA.
- Letter should include project location (coordinates, Topo Map, UTM coordinates) & purpose of project

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Revised: 08/09

Items submitted to NNEPA

1. 401 Application
2. Purpose/description of project
3. Start and end date
4. Exact location(UTM coordinate, lat,long,GPS)
5. Name of watercourse affected
6. Acreage of water in/directly impacted
7. Description of fill
8. Potential pollutants
9. Mitigation and best management plans(BMPs)
10. USACE district contacted

401 Certification Duration.....

1. Submit application to NNEPA Water Quality
 2. NNEPA has 30 days to review
 3. NNEPA generates a complete determination letter to applicant
 4. 30-day Public Notice posted
 5. After 30-day Public Notice is complete
 6. If a fee is expected, NNEPA will send fee letter
 7. Applicant is awarded 401 Certification with special conditions
- Or.....
 - NNEPA generates a incomplete letter to applicant
 - Applicant submits addendum to application
 - NNEPA reviews once again
 - NNEPA determines complete
 - 30-day Public Notice posted
 - No comments after 30-day Public Notice
 - If a fee is expected, NNEPA will send fee letter
 - Applicant awarded 401 certification with special conditions

Subchapter 4-Fee Schedule for Certification

- Dredge (Excavate) < 500 cubic yards = No Fee
- Excavate 500 cubic yards = \$500.00
- Excavate > 500 cubic yards = \$500.00 + \$0.25/yd³

(Maximum \$40,000.00)

- Fill < 2 acres = No Fee
- Fill 2 acres = \$500.00
- Fill > 2 acres = \$500.00 + \$250/acre

(Maximum \$40,000)

Certification issued only if total fee is received







Tributary



Aquatic Species







U.S. Army Corps of Engineers

- Arizona
Cynthia Palaruan
(Apache & Navajo Counties)
U.S. Army Corps of Engineers
Phoenix Regulatory Branch
3636 North Central
Phoenix, AZ 85102
(602) 230-6955
- Michael Langley
(Coconino County)
U.S. Army Corps of Engineers
Phoenix Regulatory Branch
3636 North Central
Phoenix, AZ 85102
(602) 230-6953
- USCOE website
www.usace.army.mil
- Sacramento District
- New Mexico
Deanna Cummings
U.S. Army Corps of Engineers
Albuquerque Regulatory Branch
4101 Jefferson Plaza NE
Albuquerque, NM 87109
(505) 342-3283
- Durango Regulatory-Albq. District
Chris Wrbas
103 Sheppard Drive
Durango, CO 81303
(970) 375-9509

Questions?
More Information
Please Visit Our Website

<http://www.navajoepa.org>

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(928) 871-7700

leeanna.martinez09@yahoo.com