



THE STATE
of **ALASKA**

GOVERNOR MIKE DUNLEAVY

**Department of Environmental
Conservation**

DIVISION OF WATER
Wastewater Discharge Authorization Program

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December 11, 2020

U.S. Army Corps of Engineers, Alaska District
Regulatory Division, CEPOA-RD
Col. Damon Delarosa, District Commander
P.O. Box 6898
JBER, Alaska 99506-0898

Re: USACE, Nationwide Permit Reissuance
POA-2020-001

Dear Col. Delarosa:

In accordance with Section 401 of the Federal Clean Water Act (CWA) of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed CWA §401 Certificate for placement of dredged and/or fill material in waters of the U.S., including wetlands and streams, associated with the reissuance of the proposed U.S. Army Corps of Engineers nationwide permits and proposed Alaska Regional Conditions (attached).

DEC regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 20 days of the permit decision. Visit <http://dec.alaska.gov/commish/review-guidance/> for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800; Location: 410 Willoughby Avenue, Suite 303, Juneau within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

James Rypkema
Program Manager, Storm Water and Wetlands

Enclosure: 401 Certificate of Reasonable Assurance
Draft 2021 RC 7DEC rev.pdf

cc: (with encl.)

Shannon Morgan, USACE, Anchorage
Megan Marie, ADF&G/Habitat, Anchorage

Anchorage USFWS Field Office
Matt LaCroix, EPA, AK Operations
Linda Storm, EPA, R10

State of Alaska
Department of Environmental Conservation
CWA §401 Water Quality Certification

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), a CWA §401 Water Quality Certification is issued to the U.S. Army Corps of Engineers, Alaska District, Regulatory Branch, CEPOA-RD (Attn: Col. Damon Delarosa) at P.O. Box 6898, JBER, Alaska 99506 for placement of dredged and/or fill material in waters of the U.S. including wetlands and streams in association with the reissuance of the proposed 2021 U.S. Army Corps of Engineers Nationwide Permits (NWP) and the proposed Alaska Regional Conditions.

The NWP's are general permits that cover a class of activities subject to U.S. Army Corps of Engineers jurisdiction that have minimal individual and cumulative adverse effects on the aquatic environment. The NWP's are intended to streamline the process for applicants and agencies while reducing procedural and time requirements. There are currently 52 NWPs. These NWPs were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and are currently scheduled to expire on March 18, 2022.

The U.S. Army Corps of Engineers is proposing to reissue its existing NWPs and associated general conditions and definitions, with some modifications, and to issue five new NWPs. They are also proposing to issue nine Alaska District Regional Conditions (Regional Conditions A-J). Before the Alaska District will verify an activity under one or more NWPs, the proposed activity must comply with the NWP terms and all applicable General and Regional Conditions.

Two of the proposed new NWPs would authorize certain categories of mariculture activities (i.e., seaweed and finfish mariculture) that are not authorized by NWP 48. They are proposing to divide the current NWP that authorizes utility line activities (NWP 12) into three separate NWPs that address the differences in how different linear projects are constructed, the substances they convey, and the different standards and best management practices that help ensure those NWPs authorize only those activities that have no more than minimal adverse environmental effects. Specifically, they are proposing to modify the current utility line NWP 12 to authorize only oil and natural gas pipeline activities.

Two proposed new NWPs would authorize activities associated with the construction, maintenance, repair, and removal of electric utility lines/telecommunication lines and utility lines that convey water, sewage, and other substances. The fifth proposed new NWP would authorize discharges of dredged or fill material into jurisdictional waters for the construction, expansion, and maintenance of water reuse and reclamation facilities.

A state issued water quality certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit (POA-2020-0001) and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the DEC Public Notice POA-2020-0001 posted from October 21 to November 6, 2020.

The proposed activity is located throughout Alaska.

The Department of Environmental Conservation (DEC) reviewed the application and certifies that if the permittee complies with the terms and conditions imposed by the NWP General Permit and Alaska Regional Conditions, there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

1. NWP 21, 29, 39, 40, 43, 44, 50, 51, and 52 are conditionally certified unless for project activities where a waiver of the 300 linear feet of anadromous streambed, including within their headwaters is to be granted by the district engineer via Alaska Regional Condition J, an individual CWA §401 certification is required to satisfy state water quality antidegradation requirements. (Reference: 18 AAC 70.015 and 18 AAC 70.016).

Date: December 11, 2020



James Rypkema, Program Manager
Storm Water and Wetlands