



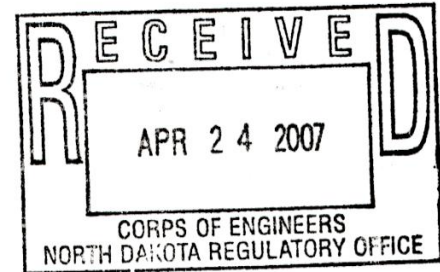
NORTH DAKOTA
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION
Gold Seal Center, 918 E. Divide Ave.
Bismarck, ND 58501-1947
701.328.5200 (fax)
www.ndhealth.gov



April 18, 2007

Daniel E. Cimarosti
State Project Manager
U.S. Army Corps of Engineers
North Dakota Regulatory Office
1513 South 12th Street
Bismarck, ND 58504-6640



Dear Mr. Cimarosti:

This Department has reconsidered its position on Section 401 Water Quality Certification for nationwide permits identified in our letter of April 2, 2007.

Specifically nationwide permit No. 18 is certified under Section 401 of the Clean Water Act, if this Department's construction and environmental disturbance requirements are attached as a condition to the permit.

Furthermore, nationwide permit No. 7 if applied to Section 10 waters is denied Section 401 Water Quality Certification for tile drain outfalls. This Department will reconsider the application if all reasonable alternatives for avoiding these waters are considered, a nutrient management plan is developed, and water quality monitoring of the drain outlet(s) is proposed.

Should you have any questions, please feel free to contact me at 701-328-5237.

Sincerely,

Michael T. Sauer
Senior Scientist
Division of Water Quality

MTS:dlp

Environmental Health
Section Chief's Office
701.328.5150

Division of
Air Quality
701.328.5188

Division of
Municipal Facilities
701.328.5211

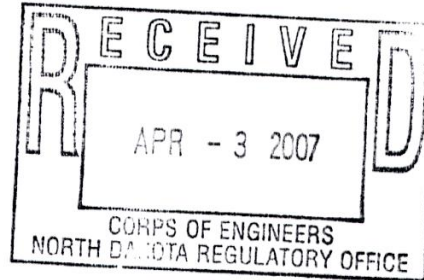
Division of
Waste Management
701.328.5166

Division of
Water Quality
701.328.5210



April 2, 2007

DANIEL E CIMAROSTI
STATE PROGRAM MANAGER
US ARMY CORPS OF ENGINEERS
ND REGULATORY OFFICE
1513 S 12TH STREET
BISMARCK ND 58504-6640



Dear Mr. Cimarosti:

This Department has completed its review of the final notice for reissuance and modifications of Nationwide Permits.

Under Section 401 of the Clean Water Act this Department hereby certifies that there will be no violations of applicable Standards of Quality for Waters of the State if our Construction and Environmental Disturbance Requirements are attached as a condition to all Nationwide Permits.

Nationwide Permits 8, 24, and 34: Not applicable.

Nationwide Permits which are certified under Section 401 of the Clean Water Act are 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 20, 21, 22, 25, 28, 30, 31, 33, 36, 37, 38, 41, 43, 44, 45, 46, 48, 49 and 50.

Additional conditions are placed on the following Nationwide Permits:

Nationwide Permits 18 and 19: Section 401 certification is issued if disposal of spoil material is at an upland site.

Nationwide Permits 12, 15, 16, 23, 27, 29, 35 and 47: Projects in Class I rivers, Class IA rivers or classified lakes are denied 401 Water Quality Certification.

Nationwide Permit 13: Projects exceeding 200 linear feet in Class I rivers, Class IA rivers and classified lakes are denied 401 Water Quality certification.

Nationwide Permit 17: 401 Water Quality certification is denied.

Nationwide Permit 32: Enforcement actions involving Class I rivers, Class IA rivers, and classified lakes are denied 401 Water Quality certification.

Daniel E. Cimarosti
April 2, 2007
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Nationwide Permits **39 and 42**: Projects that result in a loss or relocation of 150 feet or more of a stream are denied 401 Water Quality certification.

Nationwide Permit **40**: Projects that involve the discharge from tile drains to Class I rivers, Class IA rivers, Class II rivers and classified lakes are denied 401 Water Quality certification. This Department will reconsider the application if 1) All reasonable alternatives for avoiding these classified waters were considered. 2) A Nutrient Management Plan is developed and 3) Water quality monitoring of the drain outlet(s) is proposed.

Enclosed is a copy of Standards of Quality for Waters of the State which delineates river classifications in Appendix I and the lake classifications in Appendix II. These standards are periodically revised. Please be aware that in the event these standards are modified; subsequent review of 401 certification and/or conditions for Nationwide Permits may be required.

Should you have any questions, please feel free to contact me.

Sincerely,



Michael T. Sauer
Senior Environmental Scientist

MTS:mjm

Enc.



Construction and Environmental Disturbance Requirements

These represent the minimum requirements of the North Dakota Department of Health. They ensure that minimal environmental degradation occurs as a result of construction or related work which has the potential to affect the waters of the State of North Dakota. All projects will be designed and implemented to restrict the losses or disturbances of soil, vegetative cover, and pollutants (chemical or biological) from a site.

Soils

Prevent the erosion of exposed soil surfaces and trapping sediments being transported. Examples include, but are not restricted to, sediment dams or berms, diversion dikes, hay bales as erosion checks, riprap, mesh or burlap blankets to hold soil during construction, and immediately establishing vegetative cover on disturbed areas after construction is completed. Fragile and sensitive areas such as wetlands, riparian zones, delicate flora, or land resources will be protected against compaction, vegetation loss, and unnecessary damage.

Surface Waters

All construction which directly or indirectly impacts aquatic systems will be managed to minimize impacts. All attempts will be made to prevent the contamination of water at construction sites from fuel spillage, lubricants, and chemicals, by following safe storage and handling procedures. Stream bank and stream bed disturbances will be controlled to minimize and/or prevent silt movement, nutrient upsurges, plant dislocation, and any physical, chemical, or biological disruption. The use of pesticides or herbicides in or near these systems is forbidden without approval from this Department.

Fill Material

Any fill material placed below the high water mark must be free of top soils, decomposable materials, and persistent synthetic organic compounds (in toxic concentrations). This includes, but is not limited to, asphalt, tires, treated lumber, and construction debris. The Department may require testing of fill materials. All temporary fills must be removed. Debris and solid wastes will be removed from the site and the impacted areas restored as nearly as possible to the original condition.