

May 11, 2007

Lieutenant Colonel Edward R. Fleming, Commander  
U.S. Army Corps of Engineers  
69A Hagood Avenue  
Charleston, SC 29403-5107

Re: Certification in Accordance with Section 401 of the Clean Water Act, as amended.  
Certification of Consistency with the S.C. Coastal Zone Management Program

Dear Lieutenant Colonel Fleming:

The South Carolina Department of Health and Environmental Control's (Department) Bureau of Water and the Office of Ocean and Coastal Resource Management have reviewed the U.S. Army Corps of Engineers' proposal to amend the Nationwide Permit program regulations. Department staff determined that provided the proposed actions listed below (and in the attached table) are implemented and the proposed conditions are adhered to, there is a reasonable assurance that work authorized will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act (CWA), as amended, and the Coastal Zone Management Act (48-39-10 et seq.).

In accordance with the provisions of Section 401, we certify that the indicated Nationwide Permits, subject to the provided conditions, are consistent with applicable provisions of Section 303 of the CWA, as amended. We also hereby certify that there are no applicable effluent limitations under Sections 301(b) and 302, and that there are no applicable standards under Sections 306 and 307 of the CWA. The attached general conditions apply to all Nationwide Permits.

**Certification and Finding of Consistency**

<b>401 Water Quality Certification issued without conditions</b>	<b>Coastal Zone Consistency Certification issued without conditions</b>
3. Maintenance	1. Aids to Navigation
4. Fish & Wildlife Harvesting, Enhance, Attract Devices, & Activities	2. Structures in Artificial Canals
5. Scientific Measurement Devices	3. Maintenance
6. Survey Activities	4. Fish & Wildlife Harvesting, Enhance, Attract Devices, & Activities
7. Outfall Structures and Associated Intake Structures	5. Scientific Measurement Devices
13. Bank Stabilization	6. Survey Activities
15. U.S. Coast Guard Approved Bridges	7. Outfall Structures and Associated Intake Structures
18. Minor Discharges	8. Oil and Gas Structures on the Continental Shelf
19. Minor Dredging	9. Structures in Fleeting and Anchorage Areas
20. Oil Spill Cleanup	10. Mooring Buoys
22. Removal of Vessels	11. Temporary Recreational Structures
25. Structural Discharges	13. Bank Stabilization
27. Aquatic Habitat Restoration, Establishment & Enhancement Activities	15. U.S. Coast Guard Approved Bridges
31. Maintenance of Existing Flood Control Facilities	18. Minor Discharges
32. Completed Enforcement Activities	19. Minor Dredging
33. Temporary Construction, Access, and Dewatering	20. Oil Spill Cleanup
36. Boat Ramps	22. Removal of Vessels
38. Cleanup of Hazardous and Toxic Wastes	25. Structural Discharges
40. Agricultural Activities	27. Aquatic Habitat Restoration, Establishment & Enhancement Activities
41. Reshaping Existing Drainage Ditches	28. Modifications of Existing Marinas
45. Repair of Uplands Damaged by Discrete Events	31. Maintenance of Existing Flood Control Facilities
47. Pipeline Safety Program Designated Time Sensitive Inspection & Repairs	32. Completed Enforcement Activities
48. Existing Commercial Shellfish Aquaculture Activities	33. Temporary Construction, Access, and Dewatering

401 Water Quality Certification issued without conditions	Coastal Zone Consistency Certification issued without conditions
	36. Boat Ramps 37. Emergency Watershed Protection and Rehabilitation 38. Cleanup of Hazardous and Toxic Wastes 40. Agricultural Activities 41. Reshaping Existing Drainage Ditches 45. Repair of Uplands Damaged by Discrete Events 47. Pipeline Safety Progr Designated Time Sensitive Insp & Repairs 48. Existing Commercial Shellfish Aquaculture Activities
401 Water Quality Certification issued with conditions	Coastal Zone Consistency Certification issued with conditions
23. Approved Categorical Exclusions 30. Moist Soil Management for Wildlife 37. Emergency Watershed Protection and Rehabilitation 42. Recreational Facilities 44. Mining Activities	30. Moist Soil Management for Wildlife 44. Mining Activities

**Denial and Finding of Inconsistency**

The Department has determined that there is not a reasonable assurance that work authorized by the following Nationwide Permits will be conducted in a manner consistent with the certification requirements of Section 401 of the CWA, as amended, or the Coastal Zone Management Act (48-39-10 et.seq.). In accordance with the provisions of Section 401 and the S.C. Coastal Zone Management Program, we deny 401 Water Quality Certification and Coastal Zone Consistency Certification for these Nationwide Permits.

401 Water Quality Certification denied	Coastal Zone Consistency Certification denied
16. Return Water From Upland Cont. Disposal Areas 17. Hydropower Projects 21. Surface Coal Mining Activities 34. Cranberry Production 46. Discharges in Ditches 49. Coal Remining Activities 50. Underground coal Mining Activities	16. Return Water From Upland Cont. Disposal Areas 17. Hydropower Projects 21. Surface Coal Mining Activities 23. Approved Categorical Exclusions 24. Indian Tribe or State Administered Section 404 Programs 34. Cranberry Production 35. Maintenance Dredging of Existing Basins 42. Recreational Facilities 46. Discharges in Ditches 49. Coal Remining Activities 50. Underground coal Mining Activities

In accordance with agency procedures, the Department issued a Notice of Department Decision on April 25, 2007, taking action on these Nationwide Permits. This is the Department's final action on the forty-four (44) above referenced Nationwide Permits. A Request for a Final Review Conference was received on May 10, 2007, regarding five of the nationwide Permits, specifically Nationwide Permit 12, 14, 29, 39, and 43. However, the position taken in the April 25, 2007, Notice of Department Decision is the agency's last written position on these five NWP's subject to modification pending the outcome of the administrative review process.

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If you have any questions, please contact Heather Preston at (803) 898-3105 or [prestohs@dhec.sc.gov](mailto:prestohs@dhec.sc.gov) or Barbara Neale at (843) 953-0245 or [nealeb@dhec.sc.gov](mailto:nealeb@dhec.sc.gov).

Sincerely,

M. Rheta Geddings, Assistant Chief  
Bureau of Water  
Environmental Quality Control

Barbara Neale, Director  
Regulatory Division  
Office of Ocean and Coastal Resource Management

Nationwide Permit Number & Topic	401 Cert Action	CZC Cert Action
1. Aids to Navigation	N/A	Issue
2. Structures in Artificial Canals	N/A	Issue
3. Maintenance	Issue	Issue
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Issue	Issue
5. Scientific Measurement Devices	Issue	Issue
6. Survey Activities	Issue	Issue
7. Outfall Structures and Associated Intake Structures	Issue	Issue
8. Oil and Gas Structures on the Outer Continental Shelf	N/A	Issue
9. Structures in Fleeting and Anchorage Areas	N/A	Issue
10. Mooring Buoys	N/A	Issue
11. Temporary Recreational Structures	N/A	Issue
* 12. Utility Line Activities	Issue w/ Cond	Issue w/ Cond
13. Bank Stabilization	Issue	Issue
* 14. Linear Transportation Projects	Issue w/ Cond	Issue w/ Cond
15. U.S. Coast Guard Approved Bridges	Issue	Issue
16. Return Water From Upland Contained Disposal Areas	Deny	Deny
17. Hydropower Projects	Deny	Deny
18. Minor Discharges	Issue	Issue
19. Minor Dredging	Issue	Issue
20. Oil Spill Cleanup	Issue	Issue
21. Surface Coal Mining Operations	Deny	Deny
22. Removal of Vessels	Issue	Issue
23. Approved Categorical Exclusions	Issue w/ Cond	Deny
24. Indian Tribe or State Administered Section 404 Programs	N/A	Deny
25. Structural Discharges	Issue	Issue
26. [Reserved]	N/A	N/A
27. Aquatic Habitat Restoration, Establishment & Enhancement Activities	Issue	Issue
28. Modifications of Existing Marinas	N/A	Issue
* 29. Residential Developments	Issue w/ Cond	Issue w/ Cond
30. Moist Soil Management for Wildlife	Issue w/ Cond	Issue w/ Cond
31. Maintenance of Existing Flood Control Facilities	Issue	Issue
32. Completed Enforcement Actions	Issue	Issue
33. Temporary Construction, Access and Dewatering	Issue	Issue
34. Cranberry Production Activities	Deny	Deny
35. Maintenance Dredging of Existing Basins	N/A	Deny
36. Boat Ramps	Issue	Issue
37. Emergency Watershed Protection and Rehabilitation	Issue w/ Cond	Issue
38. Cleanup of Hazardous and Toxic Waste	Issue	Issue
* 39. Commercial and Institutional Developments	Issue w/ Cond	Issue w/ Cond
40. Agricultural Activities	Issue	Issue
41. Reshaping Existing Drainage Ditches	Issue	Issue
42. Recreational Facilities	Issue w/ Cond	Deny
* 43. Stormwater Management Facilities	Issue w/ Cond	Deny
44. Mining Activities	Issue w/ Cond	Issue w/ Cond
45. Repair of Uplands Damaged by Discrete Events	Issue	Issue
46. Discharges in Ditches	Deny	Deny
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs	Issue	Issue
48 Existing Commercial Shellfish Aquaculture Activities	Issue	Issue
49. Coal Remining Activities	Deny	Deny
50. Underground Coal Mining Activities	Deny	Deny

\* indicates NWP's under administrative review