



Navajo Nation Environmental Protection Agency
Surface and Ground Water Protection Department
P. O. Box 339, Window Rock, AZ 86515
Phone: 928-871-7692 • Fax: 928-871-7996



Dr. Buu Nygren
President

Richelle Montoya
Vice-President

Max Bighorse, P.E.
Principal Civil Engineer
Navajo Nation Fiscal Recovery Fund Office
P.O. Box 2469
Window Rock, AZ 86515

May 10, 2023

RE: Guidance for federal Clean Water Act Section 401 Water Quality Certification and federal Clean Water Act Section 404 Discharge of Dredge and Fill permitting requirements for Navajo Nation Fiscal Recovery Fund projects.

Mr. Bighorse,

Excavation (dredging) and/or filling of Surface Waters of the Navajo Nation usually requires federal Clean Water Act (CWA) Section 404 and Section 401 permitting. The U.S. Army Corps (Corps) administers the CWA Section 404 permitting program. The Navajo Nation Environmental Protection Agency NPDES/Water Quality Program (NNEPA WQP) administers the CWA Section 401 water quality certification permitting program on the Navajo Nation.

If a project requires a CWA Section 404 permit from the Corps, ***then*** a CWA Section 401 water quality certification permit is required from the NNEPA WQP.

Step Number 1 – Contact the Corps

For any given dredge and/or fill project within Surface Waters of the Navajo Nation the project proponent needs to determine if the project requires CWA Section 404 permitting from the Corps. The current Corps contact for NN Fiscal Recovery Fund related projects is:

Michael P. Uitvlugt
Regulatory Project Manager
US Army Corps of Engineers – Albuquerque District
Regulatory Division
4101 Jefferson Plaza NE
Albuquerque, NM 87109

Work: 505-342-3259

Work Cell: 505-985-2497

Michael.P.Uitvlugt@usace.army.mil

Step Number 2 – Contact NNEPA WQP

Once it has been determined that a project requires a CWA Section 404 permit from the Corps then a CWA Section 401 water quality certification permit is required from the NNEPA WQP. The applicant can request a pre-application meeting prior to submitting the CWA Section 401 permit application (see Attachment A, including fee schedule). To request pre-application meeting and to submit a CWA Section 401 permit application please contact Patrick Antonio at:

Patrick Antonio
NNEPA WQP
PO Box 339
Window Rock, AZ 86515

928-871-7690 or 928-871-7185

patrickantonio@navajo-nsn.gov

Required Technical Experience

The CWA Sections 404 and 401 permitting processes requires specialized technical experience in the engineering, hydrology, geology, and/or biology sciences.

These skills are needed so bridges, low water crossings, culverts, dams, aquifer recharge projects and other projects are implemented according to the best current available scientific standards for engineering, hydrology, geology, biology etc. Using the best available scientific standards helps to prevent future repeated failures of road stream crossings (bridges and culverts for example), flood control structures, dams, other structures, and helps to protect the environment. Chapter staff may lack these technical skills.

It is the understanding of the NNEPA WQP that the NN Division of Community Development will be contracting with consultants who have these technical skills and can assist Chapters in understanding the CWA Sections 404 and 401 permitting process.

Current Proposed Projects

The NNEPA WQP and the Corps are aware of the following possible projects:

- Project 1 - Chinle Chapter N8095 Road Crossing Project,
- Project 2 - Chinle Earth and Dam,
- Project 3 - Nazlini Water Conservation,
- Project 4 - Rough Rock Earthen Dam Project, and
- Project 5 - Greasewood Spring Recharge project.

The Corps indicated to the NNEPA WQP that Project 1 - Chinle Chapter N8095 Road Crossing Project likely requires a Section 404 Permit. *(Contact the Corps for verification)*

The Corps indicated to the NNEPA WQP that Project 2 - Chinle Earth and Dam, likely requires a Section 404 permit, if the project is not a part of an ongoing farming, silviculture, or ranching operation and the project purpose appears to be flood control. (*Contact the Corps for verification*)

The Corps indicated to NNEPA WQP that Project 3 - Nazlini Water Conservation, Project 4 - Rough Rock Earthen Dam Project, and Project 5 - Greasewood Spring Recharge Project may be exempt from requiring a CWA Section 404 permit provided they appear to be purely agricultural based projects that are part of an ongoing agricultural operation, or they may also be exempt based on potentially being maintenance projects that do not change the character, scope, or size of the original fill design. (*Contact the Corps to discuss these possible CWA 404 permitting exemptions.*)

Next Steps

The Corps needs to be contacted by the appropriate technical experts to formally advise if these projects or *any proposed projects which are not yet listed* require CWA Section 404 permitting. The technical experts may contact Michael Uitvlugt as referenced above. To obtain a permit from the Corps of Engineers, the Corps needs a completed Eng Form 6082 (see Attachment B), along with photographs, maps, and plans to show any waters that may be directly impacted and the impacts to those waters. The permit application and supporting documents could then be submitted to SPA-RD-NN@usace.army.mil.

The Corps is available to conduct a pre-application meeting to go over any documentation or preliminary plans that the technical experts may have and to talk about the next steps. A request for a pre-application meeting may be sent via email to SPA-RD-NN@usace.army.mil. The Corps would suggest including at least a location and some information about the proposed project when requesting a pre-application meeting as well.

(The Corps website is: <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>)

Again, **if** a project requires a CWA Section 404 permit from the Corps, **then** a CWA Section 401 water quality certification permit is required from the NNEPA WQP.

If you have any questions regarding this letter, please contact our office at 928-871-7690.

Sincerely,



Yolanda Barney
Department Director
Surface and Groundwater Protection Department
Navajo Nation Environmental Protection Agency

cc: Patrick Antonio, Navajo Nation Environmental Protection Agency
Michael P. Uitvlugt, US Army Corps, Regulatory

ATTACHMENT A



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

FEE SCHEDULE

- ❖ REMOVAL: 500 cubic yards.....\$500
> 500 cubic yards.....\$500 + \$0.025 for each additional cubic yard up to a maximum of \$40000

- FILLING: 2.0 acres.....\$500.00
> 2.0 acres.....\$500.00 + \$250.00 for each additional acre up to a maximum of \$40000

- ❖ If the project has both dredge and fill activities, the higher fee value will be the permit fee (not both).

- ❖ FEES will not be charged for activities:
 - ⇒ Involving removal of < 500 cubic yards
 - ⇒ Involving a fill of < 2.0 acres

- ❖ The fee may be refunded if:
 - ⇒ Determine that no certification is required
 - ⇒ Determine that the wrong application was filed

ATTACHMENT B

25. Is any portion of the nationwide permit activity already complete? Yes No If Yes, describe the completed work:

26. List the name(s) of any species listed as endangered or threatened under the Endangered Species Act that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. (see instructions)

27. List any historic properties that have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic property or properties. (see instructions)

28. For a proposed NWP activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, identify the Wild and Scenic River or the "study river":

29. If the proposed NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, have you submitted a written request for section 408 permission from the Corps district having jurisdiction over that project? Yes No
If "yes", please provide the date your request was submitted to the Corps district:

30. If the terms of the NWP(s) you want to use require additional information to be included in the PCN, please include that information in this space or provide it on an additional sheet of paper marked Block 30. (see instructions)

31. Pre-construction notification is hereby made for one or more nationwide permit(s) to authorize the work described in this notification. I certify that the information in this pre-construction notification is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT DATE SIGNATURE OF AGENT DATE

The pre-construction notification must be signed by the person who desires to undertake the proposed activity (applicant) and, if the statement in Block 11 has been filled out and signed, the authorized agent.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**Instructions for Preparing a
Department of the Army
Nationwide Permit (NWP) Pre-Construction Notification (PCN)**

Blocks 1 through 4. To be completed by the Corps of Engineers.

Block 5. Applicant's Name. Enter the name and the e-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the preconstruction notification, please attach a sheet of paper with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the PCN. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant's Telephone Number(s). Please provide the telephone number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, consultant, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by the applicant, if an agent is to be employed.

Block 12. Proposed Nationwide Permit Activity Name or Title. Please provide a name identifying the proposed NWP activity, e.g., Windward Marina, Rolling Hills Subdivision, or Smith Commercial Center.

Block 13. Name of Waterbody. Please provide the name (if it has a name) of any stream, lake, marsh, or other waterway to be directly impacted by the NWP activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Activity Street Address. If the proposed NWP activity is located at a site having a street address (not a box number), please enter it in Block 14.

Block 15. Location of Proposed Activity. Enter the latitude and longitude of where the proposed NWP activity is located. Indicate whether the project location provided is the center of the project or whether the project location is provided as the latitude and longitude for each of the "corners" of the project area requiring evaluation. If there are multiple sites, please list the latitude and longitude of each site (center or corners) on a separate sheet of paper and mark as Block 15.

Block 16. Other Location Descriptions. If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality where the site is located.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide a description of the location of the proposed NWP activity, such as lot numbers, tract numbers, or you may choose to locate the proposed NWP activity site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed NWP activity site if known. If there are multiple locations, please indicate directions to each location on a separate sheet of paper and mark as Block 17.

Block 18. Identify the Specific Nationwide Permit(s) You Propose to Use. List the number(s) of the Nationwide Permit(s) you want to use to authorize the proposed activity (e.g., NWP 29).

Block 19. Description of the Proposed Nationwide Permit Activity. Describe the proposed NWP activity, including the direct and indirect adverse environmental effects the activity would cause. The description of the proposed activity should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal. Identify the materials to be used in construction, as well as the methods by which the work is to be done.

Provide sketches when necessary to show that the proposed NWP activity complies with the terms of the applicable NWP(s). Sketches usually clarify the activity and result in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed NWP activity (e.g., a conceptual plan), but do not need to be detailed engineering plans.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 19.

Block 20. Description of Proposed Mitigation Measures. Describe any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed NWP activity. The description of any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or additional mitigation measures.

Block 21. Purpose of Nationwide Permit Activity. Describe the purpose and need for the proposed NWP activity. What will it be used for and why? Also include a brief description of any related activities associated with the proposed project. Provide the approximate dates you plan to begin and complete all work.

Block 22. Quantity of Wetlands, Streams, or Other Types of Waters Directly Affected by the Proposed Nationwide Permit Activity. For discharges of dredged or fill material into waters of the United States, provide the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained by the proposed NWP activity. For structures or work in navigable waters of the United States subject to Section 10 of the Rivers and Harbors Act of 1899, provide the amount of navigable waters filled, dredged, or occupied by one or more structures (e.g., aids to navigation, mooring buoys) by the proposed NWP activity.

For multiple NWPs, or for separate and distant crossings of waters of the United States authorized by NWPs 12 or 14, attach an extra sheet of paper marked Block 21 to provide the quantities of wetlands, streams, or other types of waters filled, flooded, excavated, or drained (or dredged or occupied by structures, if in waters subject to Section 10 of the Rivers and Harbors Act of 1899) for each NWP. For NWPs 12 and 14, include the amount of wetlands, streams, or other types of waters filled, flooded, excavated, or drained for each separate and distant crossing of waters or wetlands. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Identify Any Other Nationwide Permit(s), Regional General Permit(s), or Individual Permit(s) Used to Authorize Any Part of Proposed Activity or Any Related Activity. List any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. For linear projects, list other separate and distant crossings of waters and wetlands authorized by NWPs 12 or 14 that do not require PCNs. If more space is needed, attach an extra sheet of paper marked Block 23.

Block 24. Compensatory Mitigation Statement for Losses of Greater Than 1/10-Acre of Wetlands When Pre-Construction Notification is Required. Paragraph (c) of NWP general condition 23 requires compensatory mitigation at a minimum one-for-one replacement ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation is more environmentally appropriate or the adverse environmental effects of the proposed NWP activity are no more than minimal without compensatory mitigation, and provides an activity-specific waiver of this requirement. Describe the proposed compensatory mitigation for wetland losses greater than 1/10 acre, or provide an explanation of why the district engineer should not require wetland compensatory mitigation for the proposed NWP activity. If more space is needed, attach an extra sheet of paper marked Block 24.

Block 25. Is Any Portion of the Nationwide Permit Activity Already Complete? Describe any work that has already been completed for the NWP activity.

Block 26. List the Name(s) of Any Species Listed As Endangered or Threatened under the Endangered Species Act that Might be Affected by the Nationwide Permit Activity. If you are not a federal agency, and if any listed species or designated critical habitat might be affected or is in the vicinity of the proposed NWP activity, or if the proposed NWP activity is located in designated critical habitat, list the name(s) of those endangered or threatened species that might be affected by the proposed NWP activity or utilize the designated critical habitat that might be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 7 of the Endangered Species Act.

Block 27. List Any Historic Properties that Have the Potential to be Affected by the Nationwide Permit Activity. If you are not a Federal agency, and if any historic properties have the potential to be affected by the proposed NWP activity, list the name(s) of those historic properties that have the potential to be affected by the proposed NWP activity. If you are a Federal agency, and the proposed NWP activity requires a PCN, you must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

Block 28. List the Wild and Scenic River or Congressionally Designated Study River if the Nationwide Permit Activity Would Occur in such a River. If the proposed NWP activity will occur in a river in the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" under the Wild and Scenic Rivers Act, provide the name of the river. For a list of Wild and Scenic Rivers and study rivers, please visit <http://www.rivers.gov/>.

Block 29. Nationwide Permit Activities that also Require Permission from the Corps Under 33 U.S.C. 408. If the proposed NWP activity also requires permission from the Corps under 33 U.S.C. 408 because it will temporarily or permanently alter, occupy, or use a Corps federal authorized civil works project, indicate whether you have submitted a written request for section 408 permission from the Corps district having jurisdiction over that project.

Block 30. Other Information Required For Nationwide Permit Pre-Construction Notifications. The terms of some of the Nationwide Permits include additional information requirements for preconstruction notifications:

- * NWP 3, Maintenance –information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.
- * NWP 31, Maintenance of Existing Flood Control Facilities –a description of the maintenance baseline and the dredged material disposal site.
- * NWP 33, Temporary Construction, Access, and Dewatering –a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- * NWP 44, Mining Activities –if reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification.
- * NWP 45, Repair of Uplands Damaged by Discrete Events –documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration.
- * NWP 48, Commercial Shellfish Aquaculture Activities –(1) a map showing the boundaries of the project area, with latitude and longitude coordinates for each corner of the project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area (a detailed survey is not required).
- * NWP 49, Coal Remining Activities –a document describing how the overall mining plan will result in a net increase in aquatic resource functions must be submitted to the district engineer and receive written authorization prior to commencing the activity.
- * NWP 50, Underground Coal Mining Activities –if reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

If more space is needed, attach an extra sheet of paper marked Block 30.

Block 31. Signature of Applicant or Agent. The PCN must be signed by the person proposing to undertake the NWP activity, and if applicable, the authorized party (agent) that prepared the PCN. The signature of the person proposing to undertake the NWP activity shall be an affirmation that the party submitting the PCN possesses the requisite property rights to undertake the NWP activity (including compliance with special conditions, mitigation, etc.).

DELINEATION OF WETLANDS, OTHER SPECIAL AQUATIC SITES, AND OTHER WATERS

Each PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current wetland delineation manual and regional supplement published by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. The 45 day PCN review period will not start until the delineation is submitted or has been completed by the Corps.

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number. For linear projects (e.g. roads, subsurface utility lines, etc.) gradient drawings should also be included. Please submit one original, or good quality copy, of all drawings on 8½x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.

ADDITIONAL INFORMATION AND REQUIREMENTS

For proposed NWP activities that involve discharges into waters of the United States, water quality certification from the State, Tribe, or EPA must be obtained or waived (see NWP general condition 25). Some States, Tribes, or EPA have issued water quality certification for one or more NWPs. Please check the appropriate Corps district web site to see if water quality certification has already been issued for the NWP(s) you wish to use. For proposed NWP activities in coastal states, state Coastal Zone Management Act consistency concurrence must be obtained, or a presumption of concurrence must occur (see NWP general condition 26). Some States have issued Coastal Zone Management Act consistency concurrences for one or more NWPs. Please check the appropriate Corps district web site to see if Coastal Zone Management Act consistency concurrence has already been issued for the NWP(s) you wish to use.