Dave Freudenthal, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

John Corra, Director

March 20, 2007

Mr. Matt Bilodeau
US Army Corps of Engineers
Wyoming Regulatory Office
2232 Del Range Blvd., Suite 210
Cheyenne, WY 82009

RE: Section 401 Certification of Nationwide permits in Wyoming

Dear Mr. Bilodeau:

In accordance with the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the proposed nationwide program and has made the following determinations:

In view of the current state water quality standards and regulations, we have found that some of the nationwide permits are acceptable as written, some require additional conditions to assure compliance with our standards and a few must be denied certification. There are also a number of nationwide permits for which we are waiving certification either because they do not involve discharges to waters of the state or have little or no applicability in Wyoming.

WAIVER OF 401 CERTIFICATION

Nationwide permits 1, 2, 4, 8, 9, 10, 11, 15, 19, 22, 24, 28, 34, 35 and 48 are determined by this department to either not involve discharges or have little or no application in this state and, therefore, certification is waived.

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ADMIN/OUTREACH	ABANDONED MINES	AIR QUALITY	INDUSTRIAL SITING	LAND QUALITY	SOLID & HAZ. WASTE	WATER QUALITY
(307) 777-7937	(307) 777-6145	(307) 777-7391	(307) 777-7369	(307) 777-7756	(307) 777-7752	(307) 777-7781
FAX 777-3610	FAX 777-6462	FAX 777-5616	FAX 777-5973	FAX 777-5864	FAX 777-5973	FAX 777-5973

DENIAL OF 401 CERTIFICATION - ALL WATERS

401 certification of the following nationwide permits is denied on all waters in the state:

NWP 16 Return Water From Upland Contained Disposal Areas. Making water quality determinations on these return flows requires a site specific analysis. Very often these effluents will require a discharge permit from the State of Wyoming. The only way that proper state review can occur is by blanket denial of certification. Therefore, certification of NWP 16 is denied.

NWP 17 Hydropower Projects. The Federal Energy Regulatory Commission does not have an office in the state, nor does this department have an MOU or any other agreement with FERC on permit processing. Because we have a poor understanding of their procedures and we are certain that they have little understanding of our standards and regulations, we cannot issue a blanket certification of FERC licensed activities. Therefore, certification of NWP 17 is denied.

NWP 23 Approved Categorical Exclusions. This nationwide permit has been used almost exclusively on Federal Highway Administration projects and can be used to authorize activities which may have significant adverse affects on water quality. Furthermore, we believe that the proposed nationwide program coupled with existing regional general permits adequately covers most instances where use of this permit would be appropriate. Therefore, certification of NWP 23 is denied.

NWP 27 Wetland and Riparian Restoration and Creation Activities. This nationwide permit authorizes a great variety of activities which are not limited by scale or size. Projects authorized may involve a considerable amount of construction in existing waterbodies. Though this NWP may provide a less burdensome permit process for wetland creation and restoration projects, it cannot provide assurance that these projects will be constructed in compliance with water quality standards. We believe that it is necessary to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

NWP 31 Maintenance of Existing Flood Control Facilities. This new nationwide permit may have significant effects on water quality depending upon the scale of the project and site specific circumstances. This is especially true when used for the dredging of detention basins where there may be an accumulation of toxic substances or nutrients. Because we are unsure of

exactly how this permit may be applied, we believe it is prudent to evaluate each project individually and add specific conditions relative to water quality protection as needed. Therefore, certification of NWP 27 is denied.

NWP 40 Farm Buildings. This NWP has never been used in Wyoming and we are not sure what its actual applicability is. We believe, however, that it is necessary to individually review each proposal to make an appropriate certification decision. Therefore, certification of NWP 40 is denied.

NWP 43 Storm Water Management Facilities. This NWP may have significant effect on water quality depending on the scale and location of project. Depending on the source of storm water runoff, it is conceivable that significant concentrations of metals, turbidity, substances with high biological oxygen demand (BOD), oil and grease or other contaminants may be introduced into state waters. Because we are unsure of exactly what consequences to water quality may result from application of this permit, we believe it is prudent to evaluate each proposed project individually and add specific conditions relative to the protection of water quality. Therefore, certification of NWP 43 is denied.

NWP 44 Mining Activities. This NWP authorizes aggregate and hard rock/mineral mining and in and adjacent to specific water bodies. Beneficiation activities for hard rock/mineral mining are authorized within 200 feet of an "ordinary high water mark: of any open water body. The activities authorized by this NWP may have considerable , deleterious effects on water quality. Because of the potential impacts to water quality, we believe that it is necessary to review each proposed activity and add any conditions necessary to protect water quality. Therefore, certification of NWP 44 is denied.

DENIAL OF CERTIFICATION ON CLASS 1 WATERS

Class 1 waters are defined by the state water quality regulations as those in which no further water quality degradation by point source discharges other than from dams will be allowed. Nonpoint source discharges will be controlled by the implementation of best management practices designed to maintain existing water quality. Because of the high level of protection afforded to these waters by the regulations, authorization of the activities covered by the above NWPs without individual departmental review is inappropriate.

Therefore, 401 certification for NWPs 3, 5, 6, 7, 12, 13, 14, 18, 25, 26, 29, 30, 32, 33, 36, 37, 39, 41, 42, 45, 46 and 47 is denied on Wyoming Class 1 waters. These nationwide permits are certified for use on Wyoming class 2, 3, and 4 waters *(all other waters)*

provided that the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

The following is a listing of current class 1 waters in Wyoming:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;

2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);

3. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;

4. The Main Stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;

5. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;

6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortes Dam (Miracle Mile segment);

7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;

8. The main stem of Sand Creek above the U.S. Highway 14 bridge;

9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;

10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service Boundary;

11. The main stem of the Sweetwater River above the mouth of Alkali Creek;

12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;

13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;

14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;

15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;

16. Fremont Lake;

17. Wetlands adjacent to the above listed Class 1 waters.

APPROVED 401 CERTIFICATION

Nationwide permits 20, 21, 38, 49 and 50 are acceptable as written on all waters in the state so long as the general conditions, management practices, and other provisions of the nationwide program are strictly followed.

ADDITIONAL CONDITIONS ON ALL NWPS.

Every authorization by the Corps for any activity which is not subject to an individual 401 certification must include the following language:

> *The Wyoming Department of Environmental Quality has certified that the use of this nationwide permit for the proposed activity is acceptable provided that all of the terms and conditions of the nationwide permit are followed and that construction is conducted in a manner which does not result in a violation of any applicable water quality standard. This authorization in no way relieves any person from compliance with water quality standards or any other federal, state, or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.*

The following conditions apply when operating equipment or otherwise undertaking construction in a water of the state:

a. Construction equipment should not be operated below the existing water surface except as follows:

   Fording the stream at one location is acceptable, however, vehicles and equipment should not push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or footing installations is acceptable to the extent that it

does not create turbidity in excess of the Chapter 1 Surface Water Standards or unnecessary stream channel disturbance. Frequent fording should not occur in areas where extensive turbidity will be created. In all cold water fisheries and drinking water supplies (Classes 1, 2AB, 2A and 2B) in stream activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs). In all warmwater or non-game fisheries (Classes 1, 2AB, 2A, 2B and 2C) in stream activities associated with this permit shall not increase turbidity by more than 15 NTUs.

In accordance with Section 23(c)(2) of the Chapter 1 Surface Water Standards, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the numeric criteria in Section 23 (a) and (b) of the Standards in response to an individual application for a specific activity. An application must be submitted and a variance approved by the administrator before any temporary increase in turbidity above the numeric limits takes place.

b. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction should be designed to handle high flows that could be anticipated during the construction period. All structures should be completely removed from the stream channel at the conclusion of construction and the area restored to a natural appearance.

c. Care should be taken to cause only the minimum necessary disturbance. Streambank vegetation should be protected except where its removal is absolutely necessary for completion of the work.

Any vegetation, debris, or other material removed during construction must be disposed of at some location out of the stream channel or adjacent wetland areas where it cannot reenter the channel during high stream flow or runoff events.

All cut and fill slopes that will not be protected with riprap should be revegetated with appropriate species to prevent erosion.

d. All fill material should be placed and compacted and subsequently protected from erosion. Areas to be filled should be cleared of all vegetation, debris and other materials that would be objectional to the fill.

e. The period and timing of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning.

f. Care must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water. A spill contingency should be developed for all projects where a large amount of petroleum products or solvents will be stored on the project site, and must be prepared when storage of these materials exceeds the federal limits.

The Wyoming Department of Environmental Quality certifies that these permits are acceptable as described above, provided the procedures described in the application for state certification are followed and reasonable care is taken to ensure that all disturbed areas are protected from erosion. The Department also reserves the right to amend, modify, suspend or revoke this certification or any of its terms or conditions as may be appropriate or necessary to protect water quality and associated beneficial uses. Upon adoption of updated standards, this certification may be revoked and modified appropriately.

Please be aware that this letter constitutes state certification of this permit as required by Section 401 of the federal Clean Water Act. It does not provide an exemption from any other federal, state or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property which the activity may cause.

If you have any questions or would like to discuss any part of this certification, please feel free to contact Jeremy Lyon of my staff at (307) 777-7588.

Sincerely,

John V. Corra
Director
Department of Environmental Quality

JVC/JFW/JML/rm/7-0224

cc: John Emmerich, Wyoming Game and Fish, Cheyenne
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Rick Chancellor, LQD

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