

**Navajo Nation
Surface Water Quality Standards
Certification Regulations**

[Approved by the Resources Committee of the Navajo Nation Council, RCJY-29-04, on July 30, 2004]

Navajo Nation Environmental Protection Agency
Water Quality/NNPDES Program
P.O. Box 339
Window Rock, AZ 86515
(928) 871-7690

SUBCHAPTER 1 - GENERAL PROVISIONS AND DEFINITIONS

§ 101 Title

These regulations may be cited as the Navajo Nation Surface Water Quality Standards (NNSWQS) Certification Regulations.

§ 102 Authority

These regulations are adopted pursuant to § 104(b) and § 209 of the Navajo Nation Clean Water Act (NNCWA), CJY-81-99; they establish procedures and criteria concerning applications for Navajo Nation water quality certifications submitted to the Navajo Nation Environmental Protection Agency (Navajo EPA) pursuant to § 401 of the federal Clean Water Act (CWA), 33 U.S.C. Section 1341, as amended.

§ 103 Purpose

The purpose of these regulations is to describe the procedures to be used by Navajo EPA for receiving and processing applications for certification of compliance with water quality requirements and standards for projects which are subject to federal agency permits or licenses and which may result in any discharge into navigable waters or impact water quality. In this certification process, Navajo EPA acts pursuant to § 401 of the federal CWA.

§ 104 Definitions

As used in this part, the following terms shall have the meanings indicated below:

- (a) "Applicant" means a person who applies for a license or permit issued by an agency of the federal government to conduct an activity that may result in discharge into Navajo waters.
- (b) "Certification" means a written declaration by Navajo EPA, signed by the Director, that a project or activity subject to federal permit or license requirements will not violate applicable water quality requirements and standards.
- (c) "Clean Water Act" means the federal Water Pollution Control Act.
- (d) "Corps" means the U.S. Army Corps of Engineers.
- (e) "Director" means the Executive Director of Navajo EPA.
- (f) "Discharge" or "Discharge of a pollutant" has the same meaning given in § 105(a)(16) of the Navajo Nation Pollutant Discharge Elimination System Program Regulations, RCAU-169-96.
- (g) "License or permit" means any license or permit granted by an agency of the Federal Government to conduct any activity which may result in any discharge into waters of the Navajo Nation.
- (h) "Licensing or permitting agency" means any agency of the Federal Government to which application is made for a license or permit to conduct an activity which may result in a discharge into waters of the Navajo Nation.
- (i) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.
- (j) "Regional Administrator" means the Administrator of Region IX of the U.S. Environmental Protection Agency.
- (k) "Uniform Hearing Regulations" means the Uniform Regulations for Permit Review, Administrative Enforcement Orders, Hearings, and Rulemaking Under Navajo Nation Environmental Acts, RCS-155-01.

(l) "Water" or "Waters of the Navajo Nation" or "Navigable Waters" means all surface waters, including but not limited to portions of rivers, streams (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of water, surface, natural or artificial, public or private, including those dry during part of the year, that are within or border the Navajo Nation. This definition shall be interpreted as broadly as possible to include all waters that are currently used, were used in the past, or may be susceptible to use in interstate, intertribal or foreign commerce. Consistent with federal requirements, the Director may exclude from waters of the Navajo Nation certain waste treatment systems.

§ 105 Severability

If any provision of this rule or the application thereof to any person or circumstance is held invalid, the remainder of this rule and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this rule are declared to be severable.

SUBCHAPTER 2 - SCOPE AND APPLICABILITY

§ 201 Certification Required

Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities, dredge or fill, or other activities, which may result in any discharge into, or pollution or alteration of the waters of the Navajo Nation, must provide the licensing or permitting agency a certification from Navajo EPA that any such activity will comply with § 301, § 302, § 303, § 306, and § 307 of the federal CWA, the NNSWQS [RCN-191-99], and other applicable Navajo Nation requirements.

§ 202 Types of Federal Applications Requiring Certification

Navajo EPA issues, renews and modifies water quality certifications including, but not limited to, the following list. However, certification is not required for Navajo Nation-issued NPDES permits.

- (a) Permits issued by the U.S. Environmental Protection Agency (U.S. EPA), under the National Pollutant Discharge Elimination System (NPDES) program;
- (b) Permits issued by the Corps under the federal CWA § 404 permit program for the discharge of dredged and fill materials;
- (c) Applications to the Nuclear Regulatory Commission for a license to operate a facility; and
- (d) Applications to the Federal Energy Regulatory Commission for a federal license to construct and operate a hydroelectric facility.

SUBCHAPTER 3 - APPLICATION REQUIREMENTS

§ 301 Applying for Certification

A person may not conduct or commence construction for any activity requiring Navajo Nation water quality certification under § 401 of the federal CWA, unless Navajo EPA has issued certification, issued with conditions, or waived certification under this subchapter.

§ 302 Requirements for Certification

- (a) The applicant, the licensing or permitting agency, or the regional administrator (under 40 CFR 121.13) shall submit to Navajo EPA a complete description of the activity for which certification is sought, including at a minimum:

(1) the legal name and address of the applicant;

(2) a complete description of the facility or activity and of any discharge which may result from the facility or activity, including but not limited to:

- (i) the volume of the discharge;
- (ii) the biological, chemical, physical, and radiological characteristics of the discharge;
- (iii) a description of the existing environment at the site of the discharge;
- (iv) the size of the area affected;
- (v) the location or locations at which the discharge may enter waters of the Navajo Nation; and
- (vi) any environmental impact assessment, information, maps, and photographs which have been provided to the licensing or permitting agency;

(3) the name of involved waterway, lake, or other water body;

(4) a description of the function and operation of equipment, facilities, activities, or practices to minimize or to treat wastes or other effluents which may be discharged, including the degree of treatment expected to be attained;

(5) the date or dates on which the activity is proposed to begin and end, if known, and the date or dates on which the discharge will take place;

(6) a description of the methods being used or proposed to monitor the quality and characteristics of the discharge and the operation of the equipment, facilities, or activities employed in the treatment or control of pollutants; and

(7) the legal name and address of subcontractors to be employed in the activity.

(b) Navajo EPA reserves the right to request any additional information necessary to complete an application or to assist Navajo EPA to adequately evaluate the project impacts on water quality. Failure to complete an application or provide any requested additional information within the time specified in the request shall be grounds for denial of certification.

(c) Navajo EPA may exempt an applicant from the information requirements of subsections 302(a)(2), (3), and (5) of this rule, if the applicant's federal permit application is to the Corps under § 404 of the federal CWA, and the federal permit application provides the information required under subsection 302(a) of this rule.

§ 303 Completeness

(a) Navajo EPA shall review the application for completeness within thirty (30) days of receipt of the application. If the application is not complete, Navajo EPA shall notify the applicant of any additional materials reasonably necessary for review of the application.

(b) The applicant shall submit in a timely fashion, at any time during the review process, any new information or modifications of the facility or activity which are pertinent to Navajo EPA's certification responsibilities.

(c) An application is deemed complete if:

(1) Navajo EPA has not made a determination within thirty (30) days after receipt of the application or, subsequent to receipt of the initial application, within thirty (30) days of receipt of materials submitted by the applicant that supplement the application; or

(2) Navajo EPA notifies the applicant that the application is complete.

§ 304 Application Evaluation

Navajo EPA's evaluation of an application for project certification may include but need not be limited to the following:

- (a) Existing and potential beneficial uses of surface and ground water which could be affected by the proposed facility;
- (b) Potential impact from the generation and disposal of waste chemicals or sludge at a proposed facility;
- (c) Potential modification of surface water quality or water quantity as it affects water quality;
- (d) Potential modification of ground water quality;
- (e) Potential impacts from the construction of intake or outfall structures;
- (f) Potential impacts from wastewater discharges;
- (g) Potential impacts from construction activities;
- (h) The project's compliance with plans applicable to § 208 of the federal CWA;
- (i) The project's compliance with the NNCWA, the NNSWQS, and the Navajo Nation Pollutant Discharge Elimination System Program Regulations.

§ 305 Navajo EPA Certification Options

(a) Except as provided in (b), Navajo EPA shall take one of the following actions upon completing its review of the application for certification submitted under this subchapter:

(1) deny certification for any activity which Navajo EPA finds will result in a discharge that will violate any effluent limitation stated in the Navajo Nation Pollutant Discharge Elimination System Program Regulations or any standard or criteria stated in the NNSWQS;

(2) issue certification for any activity which Navajo EPA finds will not result in a discharge that will violate any effluent limitation stated in the Navajo Nation Pollutant Discharge Elimination System Program Regulations or any standard or criteria stated in the NNSWQS; or

(3) issue conditional certification for any activity that with the conditions imposed will not result in a discharge that violates any effluent limitation stated in the Navajo Nation Pollutant Discharge Elimination System Program Regulations or any standard or criteria stated in the NNSWQS, which may involve development and implementation of standardized conditions.

(b) Navajo EPA may waive certification if Navajo EPA finds that the activity will:

(1) cause minimal or no impacts to the quality of Navajo Nation waters; or

(2) require an application for a Navajo Nation-issued NPDES permit under § 301 of the Navajo Nation Pollutant Discharge Elimination System Program Regulations, a Navajo Nation-issued underground injection control permit (UIC) under § 101.21 of the Navajo Nation Underground Injection Control Regulations, or a short-term variance from water quality standards under § 208 of the NNSWQS.

§ 306 Public Notice

(a) The Director shall, within thirty (30) days of review of a completed application for certification, public notice the filing and recommended approval or denial. The Director shall add the name of any person or group upon request to

a mailing list to receive copies of public notice.

(b) In order to inform potentially interested persons of the application, a public notice announcement shall be prepared and circulated in a manner approved by the Director. The notice shall tell of public participation opportunities, shall encourage comments by interested individuals or agencies, and shall tell of any related documents available for public inspection and copying. The Director shall specifically solicit comments from affected Navajo Nation agencies.

(c) The deadline for written comment is thirty (30) days from the date of the public notice or, if a public hearing is conducted, fourteen (14) days after the date of the hearing. All comments received shall be considered in formulating Navajo EPA's position.

(d) The public may comment to the Director or request a hearing within thirty (30) days following the date of public notice. There shall be public notice of such a hearing.

(e) If any information or public comment is received during the thirty (30) day comment period which appears to raise substantial major issues concerning the certification, the Director may re-notice the application.

(f) A project applicant who has filed an application for a permit with the Corps under § 404 of the federal CWA to place dredged or fill material in navigable waters meets the requirements of this section if the § 404 permit application is given public notice by the Corps and the public notice contains a statement referencing Navajo EPA's certification responsibility under § 401 of the federal CWA.

§ 307 Final Determination by the Agency

(a) Navajo EPA shall make its final decision within thirty (30) days after the close of the comment period, as determined pursuant to subsection 306(c) of this rule or, if the project requires public notice under § 404 of the federal CWA, within thirty (30) days after the close of the comment period set by the Corps.

(b) Navajo EPA shall serve written notice upon the applicant that the certification is granted or denied or that a further specified time period is required to process the application. Granting of certification may be by regular mail. Any extension of time shall not exceed one year from the date of filing a completed application.

(c) Navajo EPA's certification of a project shall contain the following:

(1) Legal name of the applicant;

(2) Project's name and federal identification number (if any);

(3) Type of project activity;

(4) Name of water body;

(5) General location;

(6) Findings that the proposed project is consistent with:

(i) rules adopted by Navajo EPA on water quality; and

(ii) provisions of § 301, § 302, § 303, § 306 and § 307 of the federal CWA;

(7) Such conditions as the Director deems necessary to require compliance with the standards of other Navajo Nation and local agencies that the Director determines are water quality related and other appropriate requirements of Navajo law according to § 401 of the federal CWA.

(8) A condition which requires the certificate holder to notify Navajo EPA of all changes in the project proposal subsequent to certification.

(d) Certifications granted pursuant to these rules are valid for the applicant only and are not transferable.

(e) A certification shall be valid until the corresponding federal permit, license or authorization is terminated, renewed or modified. Before a federal permit is reissued, renewed, or modified, the applicant shall file a new application for certification with Navajo EPA.

(f) If Navajo EPA proposes to deny certification for a project, a written notice setting forth the reasons for denial shall be served upon the applicant which may be by regular mail. The written notice shall advise the applicant of appeal rights and procedures. A copy shall be provided to the federal permitting agency. The denial shall become effective twenty (20) days from the date of mailing such notice unless within that time the applicant requests judicial review of the final agency action. Such a request shall state the grounds for the request.

§ 308 Revocation or Suspension of Certification

(a) Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:

(1) The federal permit or license for the project is revoked;

(2) The federal permit or license allows modification of the project in a manner inconsistent with the certification;

(3) The application contained false information or otherwise misrepresented the project;

(4) Conditions regarding the project are or have changed since the application was filed;

(5) Special conditions or limitations of the certification are being violated, including violations uncovered during on-the-spot field checks;

(6) Applicable requirements of the NNSWQS are amended or revised.

(b) Written notice of intent to suspend or revoke shall be served upon the applicant which may be by certified mail. The suspension and revocation shall become effective twenty (20) days from the date of mailing such notice unless within that time the applicant requests judicial review of the final agency action. Such a request shall state the grounds for the request.

§ 309 Judicial Review

Any person challenging the issuance, denial, modification, revocation and reissuance, termination or reissuance of a certification must comply with § 214 of the Uniform Hearing Regulations for judicial review of the final Navajo EPA action.

SUBCHAPTER 4 - FEE SCHEDULE FOR CERTIFICATION

§ 401 Fees

(a) Only one certification fee shall be applicable for a project which requires both removal of material and filling of material in the immediate area of excavation. The highest fee shall apply.

(b) All fees shall be made by certified check or money order made payable to the Director of Navajo EPA. If payment is mailed, it should be sent by certified mail.

§ 402 Certification Fee

(a) Persons applying for a certification for removal of material shall pay the following fees:

(1) 500 cubic yards – \$500;

(2) Greater than 500 cubic yards – \$500 plus \$0.025 for each additional cubic yard of removal up to a maximum of \$40,000.

(b) Persons applying for a certification for filling of material shall pay the following fees:

(1) 2 acres – \$500;

(2) Greater than 2 acres – \$500 plus \$250 for each additional acre of fill up to a maximum of \$40,000.

§ 403 Fee Refund

The certification fee may be refunded if either of the following conditions exist:

(a) Navajo EPA determines that no certification will be required;

(b) Navajo EPA determines that the wrong application was filed;

§ 404 Specific Exclusions

Fees will not be charged for activities:

(a) Involving removal of less than 500 cubic yards of material;

(b) Involving a fill of less than 2 acres.

SUBCHAPTER 5 - EFFECTIVE DATE

§ 501 Date of Applicability

(a) The date of adoption of these regulations, for the purpose of § 407 of the Uniform Hearing Regulations, shall be the date of approval by the Resources Committee of the Navajo Nation Council.

(b) Except as otherwise specifically provided in these regulations, the provisions of the Navajo Nation Water Surface Quality Standards Certification Regulations shall become effective twenty-one (21) days from the date of Resources Committee approval of the regulations.