DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

June 18, 2025

Regulatory Branch

Mr. Andy Whitener
Natural Resources Director
Squaxin Island Tribe of the Squaxin Island Reservation
10 Southeast Squaxin Lane
Shelton, Washington 98584

Reference: 2026 Nationwide Permits
401 Water Quality Certification
(Request for Certification)

Dear Mr. Whitener:

The U.S. Army Corps of Engineers (Corps) is preparing to reissue its existing Nationwide Permits (NWPs) and associated general conditions and definitions. The proposed rule for reissuing the NWPs was published in the Federal Register June 18, 2025. The Corps is proposing to reissue most of the NWPs without changes. The NWP Federal Register (FR) notice is located at: https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits

Under Section 401 of the Clean Water Act (CWA), an activity which may result in a discharge into waters of the U.S. that is authorized by a Federal permit must receive a CWA Section 401 Water Quality Certification (WQC), or waiver, from the appropriate certifying authority. This process allows the certifying authority an opportunity to ensure that any discharge will comply with applicable water quality requirements.

In accordance with 40 CFR 121.5, this letter and its attachments serve as the request for certification. As required in 40 CFR 121.5(a)(2) the FR notice includes readily available water quality-related materials that informed the development of the NWPs.

Information required in a certification request to the certifying authority, as defined at 40 CFR 121.5(d), is in the FR notice, except for 40 CFR 121.5(b)(7) documentation that a pre-filing meeting request was submitted. The Corps submitted the enclosed pre-filing meeting request to your office on April 29, 2025.

The date of this letter serves as the date on which the reasonable period of time begins running. The reasonable period of time for certifying authorities to act on the proposed NWPs reissuance is six months (180 days), in accordance with 40 CFR 121.6. This provides a consistent reasonable period of time for all certifying authorities. The reasonable period of time ends on December 18, 2025. Certifying authorities can act on the certification request for the proposed NWPs in less time if they choose to do so.

The proposed categories of activities to be authorized by the NWPs for which certification is requested are described in the text of the proposed NWPs. Nationwide permits numbered 15, 16, 17, 18, 21, 25, 29, 30, 34, 39, 40, 41, 42, 43, 46, 49, 50, and 59 would authorize activities that may result in discharges and therefore 401 water quality certification is required for those NWPs. Nationwide permits numbered 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and A would authorize various activities, some of which may result in a discharge and require 401 water quality certification, and others which may not. In the opinion of the Corps, Nationwide permits numbered 1, 2, 9, 10, 11, 24, 28, 35, and 55 could not reasonably be expected to result in a discharge into waters of the United States and we do not deem certification to be necessary for this group of NWPs. However, the final decision of whether certification is needed for any of these nine types of activities rests with the certifying authority. Additionally, NWP 8 only authorizes activities seaward of the territorial seas and therefore does not require water quality certification.

An enclosed table provides the average number of times each of the NWPs were verified with pre-construction notification for the 2021 NWPs nationally, and in the Seattle District. This estimate reflects the number of discharges anticipated to be authorized by each of the proposed NWPs in a given year for the 2026 NWPs. A graph has also been enclosed to display the total amount of permits issued by the Seattle District during the first four years of the 2021 NWPs.

The Seattle District is proposing regional conditions for the proposed NWPs. Enclosed is a copy of the public notice inviting public comment on the proposed regional conditions.

The Environmental Protection Agency regulations implementing Section 401 have changed since the Corps last requested water quality certification for the reissuance of the NWPs in 2020. While the new regulations at 40 CFR 121 allow for the modification of a grant of certification upon the mutual agreement of the certifying authority and the Corps, conditions or other language that reserve the unilateral right of the certifying authority to modify or retract a certification are not allowed and may result in the Corps declining to rely on blanket certifications that contain such language.

In accordance with the Corps' regulations at 33 CFR 330.4(c), if you deny water quality certification for certain activities authorized by the proposed NWPs within the State of Washington where the Tribe has 401 water quality certification authority, then the Corps will deny without prejudice authorization for those activities. Anyone wanting to perform such activities must first obtain an activity-specific water quality certification or waiver thereof from your office before proceeding under the NWP.

Thank you for your attention regarding this matter. The Corps looks forward to working with your office throughout the water quality certification process for the proposed NWPs. If you have any questions regarding this request, please contact Ms. Lia Protopapadakis F. at lia.protopapadakis.f@usace.army.mil or by phone at (206) 669-2196.

Sincerely,



for Kathryn P. Sanborn, PhD, PE, PMP
Colonel, Corps of Engineers
District Commander

Enclosures

cc:
Erica Marbet (emarbet@squaxin.us)