

IEPA Log No.: **C-0210-10**  
CoE appl. #: **COE-2020-0002**

Public Notice Beginning Date: **November 10, 2020**  
Public Notice Ending Date: **December 10, 2020**

Section 401 of the Federal Water Pollution Control Act (Clean Water Act)  
Amendments of 1972

### **Section 401 Water Quality Certification to Discharge into Waters of the State**

**Public Notice/Fact Sheet Issued By:**

Illinois Environmental Protection Agency  
Bureau of Water, Permit Section  
1021 North Grand Avenue East, Post Office Box 19276  
Springfield, Illinois 62794-9276  
217/782-3362

**Name and Address of Discharger:** Chicago District, Corps of Engineers, Regulatory Branch, 231 South LaSalle, Suite 1500, Chicago, IL 60604; Rock Island District, Corps of Engineers, Regulatory Branch, Clock Tower Building, Post Office Box 2004, Rock Island, IL 61204-2004; Louisville District, Corps of Engineers, Indianapolis Regulatory Office, 8902 Otis Ave., Suite S106b, Indianapolis, IN 46216; Louisville District, Corps of Engineers, Newburgh Regulatory Office, P.O. Box 489, Newburgh, IN 47629-0489; St. Louis District, Corps of Engineers, Regulatory Branch, 1222 Spruce Street, St. Louis, MO 63103-2833; and Memphis District, 167 North Main Street, B-202, Memphis, TN 38103-1894

**Discharge Location:** All Counties in Illinois

**Name of Receiving Water:** All waterbodies in Illinois

**Project Description:** Reissuance and Modification of the Nationwide Permit Program

The Illinois Environmental Protection Agency (IEPA) has received an application for a Section 401 water quality certification for discharges into the waters of the state associated with multiple Nationwide Section 404 permits proposed for issuance by the U.S. Army Corps of Engineers. The Public Notice period will begin and end on the dates indicated in the heading of this Public Notice. The last day comments will be received will be on the Public Notice period ending date unless a commenter demonstrating the need for additional time requests an extension to this comment period and the request is granted by the IEPA. Interested persons are invited to submit written comments on the project to the IEPA at the above address. Commenters shall provide their names and addresses along with comments on the certification application. Commenters may include a request for public hearing. The certification and notice number(s) must appear on each comment page.

This Public Notice contains two (2) attachments. The attached Fact Sheet provides a description of the project and the antidegradation assessment. The attached draft 401 water quality certification includes 401 certifications, denials, general conditions and regional conditions based on the final Nationwide Permits published on September 15, 2020 in the Federal Register.

The application, Public Notice/Fact Sheet, comments received, and other documents are available for inspection and may be copied at the IEPA at the address shown above between 9:30 a.m. and 3:30 p.m. Monday through Friday when scheduled by the interested person.

If written comments or requests indicate a significant degree of public interest in the certification application, the IEPA may, at its discretion, hold a public hearing. Public notice will be given 30 days before any public hearing. If a Section 401 water quality certification is issued, response to relevant comments will be provided at the time of the certification. For further information, please call Darren Gove at 217/782-3362.

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PUBLIC NOTICE ATTACHMENT 1 - FACT SHEET

IEPA Log No. C-0210-20, DRAFT Section 401 Water Quality Certification with General and Special Conditions and Denial of 401 Certification Regarding Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify Nationwide Permits, September 15, 2020.

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On December 21, 2016, the U.S. Army Corps of Engineers (Corps) issued the final notice concerning the disposition of 50 different Nationwide Permits (NWP) under Section 10 of the 1899 Rivers and Harbors Act and Section 404 of the federal Clean Water Act. These five (5) year NWP are scheduled to expire on March 18, 2022. On January 6, 2017 the Corps published the final NWP in the Federal Register (82 FR 1860). The Illinois Environmental Protection Agency (Agency) is considering general water quality certification pursuant to Section 401 of the Clean Water Act for the final NWP. The final NWP include renewal of the previous 52 NWP and introduction of five (5) new NWP. Additional information about the NWP is available at <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

An Antidegradation assessment in accordance with 35 Ill. Adm. Code 302.105 (Antidegradation standard) has been conducted on the conditions and limitations of several Nationwide Permits that are proposed for issuance under the authority of Section 404 of the federal Clean Water Act. The purpose of this assessment is to determine whether or not the activities authorized under the proposed NWP will meet Illinois' water quality standards and therefore qualify for general water quality certification pursuant to Section 401 of the Clean Water Act. The Agency is proposing to issue general Section 401 water quality certification with conditions for the following proposed NWP.

NWP 3 Maintenance

NWP 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Device and Activities

NWP 5 Scientific Measuring Devices

NWP 6 Survey Activities

NWP 7 Outfall Structures and Associated Intake Structures

NWP 12 Utility Line Activities

NWP 13 Bank Stabilization

NWP 14 Linear Transportation

NWP 15 U.S. Coast Guard Approved Bridges

NWP 16 Return Water from Upland Contained Disposal Areas

NWP 17 Hydropower Projects

NWP 18 Minor Discharges

NWP 19 Minor Dredging

NWP 20 Response Operations for Oil or Hazardous Substances

NWP 22 Removal of Vessels

NWP 23 Approved Categorical Exclusions

NWP 25 Structural Discharges

NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities

NWP 29 Residential Development

NWP 30 Moist Soil Management for Wildlife

NWP 31 Maintenance of Existing Flood Control Facilities

NWP 32 Completed Enforcement Actions

NWP 33 Temporary Construction, Access and Dewatering

NWP 36 Boat Ramps

NWP 37 Emergency Watershed Protection and Rehabilitation

NWP 38 Cleanup of Hazardous and Toxic Waste

NWP 39 Commercial and Institutional Developments

NWP 40 Agricultural Activities

NWP 41 Reshaping Existing Drainage Ditches

NWP 42 Recreational Facilities

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NWP 43 Stormwater Management Facilities  
NWP 45 Emergency Repair Activities  
NWP 46 Discharges into Ditches and Canals  
NWP 51 Land-Based Renewable Energy Generation Facilities  
NWP 52 Water-Based Renewable Energy Generation Pilot Projects  
NWP 53 Removal of Low-Head Dams  
NWP 54 Living Shorelines  
\*NWP C Electric Utility Line and Telecommunications Activities  
\*NWP D Utility Line Activities for Water and Other Substances

The Agency proposes to deny 401 water quality certification for the following Nationwide Permits. Activities that are permitted under these Nationwide Permits by the U.S. Army Corps of Engineers will require an individual 401 water quality certification from the Agency:

NWP 21 Surface Coal Mining Activities  
NWP 34 Cranberry Production Activities  
NWP 44 Mining Activities  
NWP 48 Commercial Shellfish Aquaculture Activities  
NWP 49 Coal Remining Activities  
NWP 50 Underground Coal Mining Activities  
\* NWP E Water Reclamation and Reuse Facilities

The following NWPs only require a Section 10 USACOE permit and therefore do not require 401 water quality certification:

NWP 1 Aids to Navigation  
NWP 2 Structures in Artificial Canals  
NWP 8 Oil and Gas Structures on the Outer Continental Shelf  
NWP 9 Structures in Fleeting and Anchorage Areas  
NWP 10 Mooring Buoys  
NWP 11 Temporary Recreational Structures  
NWP 24 Indian Tribe or State Administered Section 404 Programs  
NWP 26 Reserved  
NWP 28 Modifications of Existing Marinas  
NWP 35 Maintenance Dredging of Existing Basins  
\* NWP A  
\* NWP B

\* New Nationwide Permits.

New NWPs proposed for authorization include the following:

NWP A Seaweed Mariculture Activities which authorizes structures and work in marine waters, including structures anchored to the seabed for seaweed mariculture. The terms of the NWP will also include multi-trophic mariculture activities. This proposed new NWP would not authorize the cultivation of freshwater species. The U.S. Army Corps of Engineers has stated that 401 certification is not needed for this NWP because, in their opinion, it would authorize activities that could not reasonably be expected to result in a discharge to waters of the U.S. Therefore, the Illinois EPA is not taking action on this NWP.

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NWP B Finfish Mariculture Activities which authorizes structures and work in marine and estuarine waters for finfish mariculture activities, including structures anchored to the seabed in waters overlying the outer continental shelf. This NWP is limited to finfish mariculture activities in marine waters and does not authorize land-based finfish aquaculture activities. The U.S. Army Corps of Engineers has stated that 401 certification is not needed for this NWP because, in their opinion, it would authorize activities that could not reasonably be expected to result in a discharge to waters of the U.S. Therefore, the Illinois EPA is not taking action on this NWP.

NWP C Electric Utility Line and Telecommunications Activities which authorizes activities required for the construction, maintenance, repair and removal of electric utility lines, telecommunication lines and associated facilities in waters of the U.S., provided the activity does not result in the loss of greater than ½-acre of WOUS for each single and complete project.

NWP D Utility Line Activities for Water and Other Substances which authorized activities required for the construction, maintenance, repair and removal of utility lines for water and other substances (excluding oil, natural gas, and electricity). Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or C, respectively. This NWP also authorized associated utility line facilities in WOUS, provided the activity does not result in the loss of greater than ½-acre of WOUS for each single and complete project.

NWP E Water Reclamation and Reuse Facilities which authorizes Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality. The discharge must not cause the loss of greater than ½-acre of WOUS. This NWP also authorized temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. The Illinois EPA has determined that this NWP introduces excessive for degradation of existing uses as a result of potential conversions of natural waterbodies into treatment systems and therefore warrants case specific 401 certification review. Consequently, the Illinois EPA proposes to deny 401 water quality certification.

Proposed Modifications

Nationwide Permit(s)	Proposed Changes
NWP 29, NWP 39, NWP 40, NWP 42, NWP 43, NWP 44, NWP 51, NWP 52	Remove 300 linear foot limit for losses of stream bed and rely on 1/2-acre limit, preconstruction notification (PCN) review process, and other tools to comply with Clean Water Act Section 404(e)
NWP 3	Authorize maintenance of fills that were constructed prior to establishment of requirement for Clean Water Act section 404 authorization; clarify that NWP authorizes small amounts of riprap to protect structure or fill.
NWP 12 NWP C NWP D	Issue separate NWPs for oil or natural gas pipeline activities, electric utility line and telecommunications activities, and utility lines for water and other substances; reduce number of PCN thresholds

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NWP 14	Add “driveways” to examples of activities authorized by this NWP.
NWP 19	Increase limit to 50 cubic yards.
NWP 49	Remove requirement for written authorization before commencing authorized activity.
NWP 27	Add coral restoration and relocation. Add reservoir sediment management to provide continuity in sediment transport through reservoirs.
NWP 41	Add irrigation ditches.
NWP 48	Remove 1/2-acre limit for impacts to submerged aquatic vegetation and preconstruction notification thresholds
NWP A	Issue new NWP to authorize seaweed mariculture activities
NWP B	Issue new NWP to authorize finfish mariculture activities
NWP E	Issue new NWP to authorize discharges of dredged or fill material for water reclamation and reuse facilities
General condition 17, tribal rights	Restore text of general condition in 2012 NWPs.
General condition 18, endangered species	Revise to address 2019 changes to 50 CFR part 402.
General condition 23, mitigation	Add 1/10-acre threshold for compensatory mitigation for losses of stream bed.
General condition 25, water quality	Clarify that if NWP activity does not comply with conditions of a general water quality certification, an individual certification is required, unless a waiver occurs.
General condition 26, coastal zone management	Clarify that if NWP activity does not comply with conditions of a general consistency concurrence, and individual consistency concurrence is required, unless presumption occurs.
General condition 28, use of multiple NWPs	Modify general condition to clarify application to NWPs with different numeric limits.
General condition 32, pre-construction notification	Modify to encourage use of Form ENG 6082 for NWP pre-construction notifications

**Identification of Proposed Pollutant Load Increases or Potential Impacts on Uses.**

Seaweed mariculture activities are usually conducted using floating racks or long-lines supported by stakes or floats. Because these mariculture activities do not typically involve discharges of dredged or fill material into WOUS, USACE is seeking to issue NWP A under the authority of section 10 of the Rivers and Harbors Act of 1899.

Finfish mariculture activities may produce discharges that involve animal wastes, feeds or chemicals, but are not expected to involve discharges of dredged or fill material into WOUS. USACE is seeking to issue NWP B to authorize finfish mariculture activities in marine and estuarine coastal waters out to the limit of the territorial seas and in ocean waters beyond the territorial seas that overlie the outer continental shelf. In coastal waters, under section 10 of the Rivers and Harbors Act of 1899 the Corps regulates obstructions in navigable WOUS. For finfish mariculture activities, this can include cages and net pens. Department of the Army authorization is required under Section 10 of the Rivers and Harbors Act of 1899 for finfish mariculture structures on the outer continental shelf that are anchored to the seabed.

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Potential load increases associated with NWP C would be local and temporary with the discharges of dredged or fill materials into WOUS, and structures or work for crossings associated with proposed activities. Material from excavation can be temporarily sidecast into WOUS for no more than 3 months but can be extended to 180 days by the District Engineer where appropriate. In wetlands, 6-12 inches should be backfilled with topsoil from the trench and backfill methods cannot drain WOUS. Exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing each waterbody. Overhead utility line foundations must be a minimum size necessary and substations and access roads must not result in the loss of more than ½-acre of WOUS. Temporary structures, fills and work necessary for remediation work for inadvertent returns of drilling fluids to WOUS is authorized and work must be done as soon as practicable to restore the waterbody. Authorization is also given for temporary structures, fills and work including the use of temporary mats, necessary to conduct utility line activity and must be removed entirely. Affected areas must be restored to preconstruction elevations and be revegetated.

Potential load increases associated with NWP D would be local and temporary with the discharges of dredged or fill material into WOUS and structures or work for crossings associated with construction, maintenance or repair of water or other utility lines including intake and outfall structures, lines for water, stormwater, sewage, wastewater brine, irrigation water and non-petrochemical industrial products. Trench excavation material can be temporarily sidecast into WOUS for no more than 3 months but can be extended to 180 days by the District Engineer where appropriate. In wetlands, 6-12 inches should be backfilled with topsoil from the trench and backfill methods cannot drain WOUS. Exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing each waterbody. Foundations for above-ground utility lines must be the minimum size necessary and access roads and utility substation work must not result in the loss of more than ½-acre of WOUS. Access road construction is authorized for temporary structures, fills and work including the use of temporary mats, necessary to conduct utility line activity and must be removed entirely. Affected areas must be restored to preconstruction elevations and be revegetated.

Potential load increases associated with NWP E would be local and temporary with the discharges of dredged or fill material into WOUS for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water filtration and constructed wetlands to improve water quality. Discharge must not cause the loss of greater than ½-acre of WOUS. Authorization is also given for temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills would be required to be removed in their entirety and the affected areas must be restored to preconstruction elevations and be revegetated. Antidegradation provisions require that the Agency assure that all existing uses are protected as a result of the activity that requires a 401 certification. In addition to the aquatic resource loss that occurs as a result of the discharge, the proposed NWP may result in the conversion of areas of a natural waterbody into a waste treatment system. Such use is inconsistent with general 401 certification because the extent of degradation is not made evident by the proposed fill limitations of the permit. Therefore, it is recommended that the Illinois EPA does not issue 401 certification for this NWP.

### **Identification and Characterization of the Affected Water Body.**

The Nationwide Permits regulate activities that may be applied to a variety water bodies within the boundaries of the U.S. Army Corps of Engineers (Corps) Rock Island, St. Louis, Louisville, Memphis and Chicago Districts. These water bodies are General Use, Upper Dresden Island Pool Aquatic Life Use, Chicago Area Waterway System Aquatic Life Use A, Chicago Area Waterway System and Brandon Pool Aquatic Life Use B, and Secondary Contact, Indigenous Aquatic Life Use Waters and Lake Michigan Basin waters within the State of Illinois.

All impacted wetlands will be required to be fully delineated in accordance with the USACOE's Wetland Delineation Manual. Any impacts to surface waters and/or wetlands will need to be mitigated for in accordance with regulations published in the Federal Register dated April 10, 2008 under 33 CFR Parts 325 and 332 and 40 CFR Part 230 entitled "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule."

### **Fate and Effect of Parameters Proposed for Increased Loading.**

The Antidegradation Assessment finds that the activities proposed for general 401 water quality certification, when conducted in a manner that is consistent with the terms and conditions of the Nationwide permits and the proposed 401 regional conditions, will not result in perceptible increases in pollutant loading to water bodies and will be fully protective of all existing uses.

### **Purpose and Social & Economic Benefits of the Proposed Activity.**

A variety of benefits are associated with the activities allowed by the Nationwide Permits. These generally entail improvements in transportation, maintenance of waters for transportation, agricultural, residential, commercial, and recreational development, and restoration of waters for aquatic life uses. This assessment finds that the Nationwide Permit activities proposed for 401 certification will benefit the community at large and that any pollutant loadings associated with such activities are necessary for important social or economic development.

### **Assessments of Alternatives for Less Increase in Loading or Minimal Environmental Degradation.**

The review of the activities allowed under each of the Nationwide Permits proposed for general 401 water quality certification finds that the conditions and limitations defined by the Nationwide Permits and associated regional conditions (where applicable) will assure that all technically and economically reasonable measures to avoid or minimize the extent of the impacts will be incorporated into the proposed activity.

### **Agency Conclusion.**

This preliminary assessment in regards to 401 water quality certification issuance for the U.S. Army Corps of Engineers Nationwide Permits was conducted pursuant to the Illinois Pollution Control Board regulation for Antidegradation found at 35 Ill. Adm. Code 302.105 (Antidegradation standard) and was based on the information available to the Agency at the time this Antidegradation review summary was written. We tentatively find that activities proposed for general 401 Water quality certification, with applicable regional conditions, would have minimal individual and cumulative impacts on the aquatic resources within the State of Illinois. Comments received during the 401 water quality certification public notice period will be evaluated before a final decision is made by the Agency.

## PUBLIC NOTICE DRAFT

### FINAL DATE when Issued

U.S. Army Corps of Engineers, Rock Island  
ATTN: Ms. Samantha Chavez, Regulatory Branch  
Post Office Box 2004  
Clock Tower Building  
Rock Island, IL 61204-2004

Re: Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify  
Nationwide Permits, September 15, 2020  
CWA §401 Certification/Denial and applicable conditions  
Illinois EPA Log no. C-0210-20

Dear Ms. Chavez:

On September 15, 2020 the Corps of Engineers issued the notice of proposed rulemaking concerning their determination to reissue and modify the current Nationwide Permits (NWP) that are set to expire on March 18, 2022. By letter dated October 13, 2020 your office officially requested CWA §401 certification for those nationwide permits applicable in Illinois and further described in the Federal Register. By this final determination document the Illinois EPA grants §401 water quality certification for forty (40) nationwide permits with the special and/or general conditions specified below. This document also provides notice of the Agency determination to deny six (6) of the proposed nationwide permits which are provided below with reasons in accordance with 40 CFR 121.7(e)(2).

### **CWA §401 certification is hereby granted, subject to General Conditions 1 through 12 below, for the following nationwide permits:**

NWP 3 – Maintenance.  
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Device and Activities  
NWP 5 – Scientific Measurement Devices  
NWP 7 – Outfall Structures and Associated Intake Structures  
NWP 18 – Minor Discharges  
NWP 19 – Minor Dredging  
NWP 20 – Response Operations for Oil or Hazardous Substances  
NWP 22 – Removal of Vessels  
NWP 25 – Structural Discharges  
NWP 30 – Moist Soil Management for Wildlife  
NWP 31 – Maintenance of Existing Flood Control Facilities  
NWP 33 – Temporary Construction, Access and Dewatering  
NWP 36 – Boat Ramps  
NWP 41 – Reshaping Existing Drainage Ditches  
NWP 45 – Repair of Uplands Damaged by Discrete Events  
NWP 46 – Discharges into Ditches

PUBLIC NOTICE ATTACHMENT 2 - DRAFT 401 Water Quality Certification

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**CWA §401 certification is hereby granted, subject to General Conditions 1 through 12 below and the Special Conditions which are contained in the referenced attachment for the following identified nationwide permits:**

NWP 6 – Survey Activities. Refer to Special Conditions for NWP 6 in Attachment.

NWP 12 – Oil or Natural Gas Pipeline Activities. Refer to Special Conditions for NWP 12 in Attachment.

NWP 13 – Bank Stabilization. Refer to Special Conditions for NWP 13 in Attachment.

NWP 14 – Linear Transportation Projects. Refer to Special Conditions for NWP 14 in Attachment.

NWP 15 – U.S. Coast Guard Approved Bridges. Refer to Special Conditions for NWP 15 in Attachment.

NWP 16 – Return Water from Upland Contained Disposal Areas. Refer to Special Conditions for NWP 16 in Attachment.

NWP 17 – Hydropower Projects. Refer to Special Conditions for NWP 17 in Attachment.

NWP 23 – Approved Categorical Exclusions. Refer to Special Conditions for NWP 23 in Attachment.

NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Refer to Special Conditions for NWP 27 in Attachment.

NWP 29 – Residential Developments. Refer to Special Conditions for NWP 29 in Attachment.

NWP 32 – Completed Enforcement Actions. Refer to Special Conditions for NWP 32 in Attachment.

NWP 37 – Emergency Watershed Protection and Rehabilitation. Refer to Special Conditions for NWP 37 in Attachment.

NWP 38 – Cleanup of Hazardous and Toxic Waste. Refer to Special Conditions for NWP 38 in Attachment.

NWP 39 – Commercial and Institutional Developments. Refer to Special Conditions for NWP 39 in Attachment.

NWP 40 – Agricultural Activities. Refer to Special Conditions for NWP 40 in Attachment.

NWP 42 – Recreational Facilities. Refer to Special Conditions for NWP 42 in Attachment.

NWP 43 – Stormwater Management Facilities. Refer to Special Conditions for NWP 43 in Attachment.

NWP 51 – Land-Based Renewable Energy Generation Facilities. Refer to Special Conditions for NWP 51 in Attachment.

NWP 52 – Water-Based Renewable Energy Generation Pilot Projects. Refer to Special Conditions for NWP 52 in Attachment.

NWP 53 – Removal of Low-Head Dams. Refer to Special Conditions for NWP 53 in Attachment.

NWP 54 – Living Shorelines. Refer to Special Conditions for NWP 54 in Attachment.

NWP C – Electric Utility Line and Telecommunications Activities. Refer to Special Conditions for NWP 12 in Attachment.

NWP D – Utility Line Activities for Water and Other Substances. Refer to Special Conditions for NWP 12 in Attachment.

**CWA §401 certification is hereby denied with reasons provided in accordance with 401 CFR 121.7 for the following NWPs:**

NWP 21 – Surface Coal Mining Activities. The Illinois EPA has determined that a case-specific review is warranted for all surface mining activities including carbon extraction because pursuant to 35 Ill. Admin. Code Section 401.102, mining activities are identified as having, when certain refuse materials are used, the capability to cause or threaten to cause a nuisance or render waters harmful or detrimental to public health and to all legitimate uses including but not limited to livestock and wildlife uses. The likelihood that contaminants related to coal extraction, particularly acid producing minerals in mine refuse, would be found within overburden and soil stockpiles and therefore present within fill materials warrant a facility specific antidegradation assessment pursuant to 35 Ill. Admin. Code Section 302.105. Additionally, Illinois' Section 401 implementation rules at 35 Ill. Admin. Code Part 395

regarding material testing exemptions specifically exclude material with known sources of pollution. Therefore, Section 401 certification is denied for this nationwide permit (NWP21).

NWP 34 – Cranberry Production Activities. The Illinois EPA has determined that the area of impact that is allowed by an authorization under this nationwide permit exceeds 1/2 acre. 1/2 acre is determined to be representative of the maximum threshold for minimal degradation of existing uses of aquatic resources. Consequently, any activity authorized under this nationwide permit must be subject to a case-specific antidegradation assessment pursuant to 35 Ill. Admin. Code Section 302.105. Therefore the Illinois EPA denies 401 certification for NWP 34.

NWP 44 – Mining Activities: The Illinois EPA has determined that a case-specific review is warranted for all surface mining activities because pursuant to 35 Ill. Admin. Code Section 401.102, mining activities are identified as having, when certain refuse materials are used, the capability to cause or threaten to cause a nuisance or render waters harmful or detrimental to public health and to all legitimate uses including but not limited to livestock and wildlife uses. Furthermore, all mining activities are regulated by the Illinois EPA under federal and state statute because of their potential to cause or threaten to cause water pollution. Therefore, for the above reasons, the Illinois EPA denies 401 certification for NWP 44.

NWP 48 – Commercial Shellfish Mariculture Activities: As proposed, the Illinois EPA believes this nationwide permit is inapplicable to waters of the U.S. that are found within the State of Illinois. Therefore, the Illinois EPA denies 401 certification for NWP 48.

NWP 49 – Coal Remining Activities: By reference to the certification denial explanation for NWP 21, the Illinois EPA denies 401 certification for NWP 49.

NWP 50 – Underground Coal Mining: By reference to the certification denial explanation for NWP 21, the Illinois EPA denies 401 certification for NWP 50.

NWP E – Water Reclamation and Reuse Facilities: As proposed in the Federal Register, this proposed nationwide permit would appear to allow utilization of existing natural waterbodies as treatment devices. According to 35 Ill. Admin. Code 301.440 such utilization is not permissible. Therefore, the Illinois EPA denies 401 certification for NWP E.

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#### 401 Certification General Conditions

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General Conditions 1 through 12 shall be applicable to all NWPs that are granted 401 certification.

#### **General Condition 1: Waterbodies that Require Individual Certification**

Pursuant to 35 Ill. Adm. Code Section 302.105(d)(6), an individual 401 water quality certification will be required for activities permitted under these Nationwide Permits for discharges to waters designated by the State of Illinois as waters of particular biological significance or Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b). Biologically Significant Streams (BSS) are cataloged in Illinois DNR's publication "Integrating Multiple Taxa in a Biological Stream Rating System" and may be identified at: <https://www2.illinois.gov/dnr/conservation/BiologicalStreamratings/Pages/default.aspx>.

**General Condition 2: Water Quality Impairments**

Pursuant to 35 Ill. Adm. Code Section 302.105(a), 302.105(c)(2)(B) and 395.401(a), an individual 401 water quality certification will be required for activities permitted under these Nationwide Permits that may cause a discharge that, whether temporarily or permanently, may cause or contribute to additional loading of any pollutant, or deterioration of any water quality parameter, such as pH or dissolved oxygen, where such pollutant or parameter is also designated by the State of Illinois as a cause of water quality impairment of the particular segment of the receiving water body according to the Illinois Environmental Protection Agency's Section 303(d) list. The most recent Illinois Integrated Water Quality Report and Section 303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>.

**General Condition 3: Threatened and Endangered Species**

Pursuant to 35 Ill. Admin. Code Section 302.105(f)(1)(F), prior to proceeding with any work in furtherance of activities permitted under these Nationwide Permits, potential impacts to State threatened or endangered species and Natural Areas shall be determined in accordance with applicable consultation procedures established under 17 Ill. Admin Code Part 1075. The Department of Natural Resources (IDNR) Ecological Compliance Assessment Tool (EcoCAT) is available to complete consultation at <http://dnr.illinois.gov/EcoPublic/>. If IDNR determines that adverse impacts to protected natural resources are likely, the applicant shall address those identified concerns with IDNR through the consultation process. Please contact IDNR, Impact Assessment Section at 217-785-5500 if you have any questions regarding consultation.

**General Condition 4: TMDLs**

Pursuant to 35 Ill. Admin. Code Section 302.105(a), 302.105(c)(2)(B) and 395.401(a), activities permitted under these Nationwide Permits that may cause a discharge that, whether temporarily or permanently, may cause or contribute to additional loading of any pollutant, or deterioration of any water quality parameter, such as pH or dissolved oxygen, where such pollutant or parameter is addressed by a USEPA approved Total Maximum Daily Load (TMDL) report for the receiving water body shall develop and implement additional measures and or procedures which ensure consistency with the load allocations, assumptions and requirements of the TMDL report. TMDL program information and water listings are available at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/reports.aspx>.

**General Condition 5: Prohibitions**

Pursuant to 35 Ill. Admin. Code Section 395.401(a), the applicant shall not cause:

- violation of applicable provisions of the Illinois Environmental Protection Act;
- water pollution defined and prohibited by the Illinois Environmental Protection Act;
- violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
- interference with water use practices near public recreation areas or water supply intakes.

**General Condition 6: Erosion and Sedimentation Control Measures**

Pursuant to the Illinois Environmental Protection Act Section 39(a)[415 ILCS 5/39(a)] and 35 Ill. Admin. Code Sections 302.203 and 395.402(b)(2), the applicant shall implement all necessary sedimentation and erosion control measures consistent with the current edition of the "Illinois Urban Manual" found at <https://illinoisurbanmanual.org/>. Interim measures to

prevent erosion during construction shall be taken and may include the installation of sedimentation basins, silt fencing and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. All areas affected by construction shall be seeded and stabilized as soon after construction as possible.

**General Condition 7: NPDES Stormwater Construction Permit**

Pursuant to the Illinois Environmental Protection Act Section 39(a)[415 ILCS 5/39(a)] and 35 Ill. Admin. Code Section 395.402(b)(2), the applicant shall be responsible for obtaining an NPDES Storm Water Permit required by the federal Clean Water Act prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be applied for at <https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/construction.aspx>.

**General Condition 8: Spill Response Plan**

Pursuant to 35 Ill. Admin. Code Sections 395.401, 302.203 and 302.208, the applicant shall ensure that a spill avoidance and response plan has been developed and implemented for management of accidental releases of petroleum, oil, and lubricant products to the aquatic environment during construction and for emergency notification of applicable downstream water supply operators. Absorbent pads, containment booms and skimmers shall be available to facilitate the cleanup of petroleum spills. If floating hydrocarbon (oil and gas) products are observed, the applicant or his designated individual will be responsible for directing that work be halted so that appropriate corrective measures are taken in accordance with the plan prior to resuming work.

**General Condition 9: Hydraulic Machinery**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.304, and 302.515, all hydraulic machinery utilized for the permitted activity and used in or immediately adjacent to waters of the State shall utilize biodegradable or bio-based hydraulic fluids to minimize pollution in the case of broken or leaking hydraulic equipment.

**General Condition 10: Temporary Structures and Work**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.204, and 395.401(b), temporary work pads, cofferdams, access roads and other temporary fills are approved provided that such activities are constructed with clean coarse aggregate or non-erodible non earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities. Temporary fills within streams, creeks or rivers shall utilize adequate bypass measures (i.e. dam and pump, flumes, culverts, etc.) to minimize sedimentation and erosion and to maintain normal stream flow during construction.

**General Condition 11: Construction Site Dewatering**

Dewatering of a construction site is authorized provided the dewatering activity is limited to the immediate work area within a cofferdam or otherwise isolated from waters of the State, and the work site is free from sources of contamination including those of natural origin. Dewatering activities shall incorporate Best Management Practices in accordance with the current edition of the "Illinois Urban Manual" <https://illinoisurbanmanual.org/> Practice Standard for Dewatering (no. 813) or as otherwise appropriate to ensure that return flows from

the dewatering activity are free of unnatural turbidity and floating debris and meet applicable water quality standards. Dewatering or discharge of flush water from construction of drilled piers or boreholes is not authorized and must be conducted in accordance with an NPDES permit issued by the Illinois EPA.

**General Condition 12: Discharged Material Quality**

Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.208 and 395.401(b), any spoil material excavated, dredged or otherwise produced must not be returned to the water body but must be deposited in a self-contained area in compliance with all state statutes. Except as specifically allowed by special condition, any backfilling must be done with clean material that is predominantly sand or larger size material, with no more than 20% passing a #230 U. S. sieve and placed in a manner to prevent violation of applicable water quality standards.

401 Certification Special Conditions

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Special Conditions including the conditional exclusions of 401 certification coverage that are listed within the Attachment: “Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits” shall be applicable as stated therein.

Should you have any questions or comments regarding the content of this nationwide certification, please contact Darren Gove at 217-782-3362.

Sincerely,

Darin E. LeCrone, P.E.  
Manager, Permit Section  
Division of Water Pollution Control

DEL:DRG:C-0210-20.docx

Attachment: Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits Regarding Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify Nationwide Permits, September 15, 2020

cc: Records Unit  
CoE, Chicago District  
CoE, Louisville District (Indianapolis Office)  
CoE, Louisville District (Newburgh Regulatory Office)  
CoE, Memphis District  
CoE, St. Louis District  
IDNR, Bartlett  
IDNR, OWR, Chicago  
IDNR, OWR, Springfield  
USEPA, Region 5  
USFWS, Rock Island, Barrington and Marion

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 6  
Survey Activities**

1. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(iii), 302.203, and 395.401(a), the applicant for the applicable nationwide permit shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
  - a. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;
  - b. Sidecast material is not placed within ponds or other water bodies other than wetlands; and
  - c. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site or used as backfill (refer to Condition 4).
3. Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.205, and 395.401(a), backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean coarse aggregate, gravel or other material which will not cause siltation. Excavated material may be used only if:
  - a. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
  - b. Excavation and backfilling are done under dry conditions.
4. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), and 395.401(a), backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMITS 12, C, and D.  
Utility Line Activities, Electric, Water, and Others.**

1. Pursuant to 35 Ill. Adm. Code Sections 302.105(c)(2)(B), 302.208, 395.401, case-specific (individual) 401 water quality certification from the Illinois EPA will be required for:
  - a. activities in the following waters:
    - i. Lake Calumet
    - ii. Fox River (including the Fox Chain of Lakes)
    - iii. Lake Michigan
    - iv. Chicago Sanitary and Ship Canal
    - v. Calumet-Sag Channel
    - vi. Little Calumet River
    - vii. Grand Calumet River
    - viii. Calumet River

PUBLIC NOTICE ATTACHMENT 2 - DRAFT 401 Water Quality Certification

IEPA Log No. C-0210-20: DRAFT Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits Regarding Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify Nationwide Permits, September 15, 2020

IEPA Public Notice Start Date: November 10, 2020 - Expires December 10, 2020

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- ix. Pettibone Creek (in Lake County)
- x. South Branch of the Chicago River (including the South Fork)
- xi. North Branch of the Chicago River (including the East and West Forks and the Skokie Lagoons)
- xii. Chicago River (Main Stem)
- xiii. Des Plaines River
- xiv. Kankakee River

b. activities in the following waters if material is sidecast into waters of the State or wetlands:

- i. Saline River (in Hardin County)
- ii. Richland Creek (in St. Clair and Monroe Counties)
- iii. Rock River (in Winnebago County)
- iv. Illinois River upstream of mile 229.6 (Illinois Route 178 bridge)
- v. Illinois River between mile 140.0 and 182.0
- vi. DuPage River (including the East and West Branches)
- vii. Salt Creek (Des Plaines River Watershed)
- viii. Waukegan River (including the South Branch)

c. activities in waters designated as Public and Food Processing Water Supplies with surface intake facilities within 2000 feet of the proposed discharge unless the discharge is reasonably considered downstream of the intake. The Illinois EPA's Division of Public Water Supply at 217/782-1020 may be contacted for information on these water supplies

2. Section 401 water quality certification is hereby issued for all other waters, with the following conditions:

- a. Pursuant to 35 Ill. Admin. Code Sections 395.401(b) and 302.105(c)(2)(B)(iii), the applicant for the applicable nationwide permit(s) shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
- b. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, 302.208, 395.203 and 395.401, dredged material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
  - i. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;
  - ii. Side cast material is not placed within ponds or other water bodies other than wetlands; and
  - iii. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site (refer to Condition 2.e) or used as backfill (refer to Condition 2.d).
- c. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, 302.208, 395.203 and 395.401, backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only if:

- i. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
  - ii. Excavation and backfilling are done under dry conditions.
- d. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, 302.208, 395.203 and 395.401, backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.
- e. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, 302.208, 395.203 and 395.401, all material excavated which is not being used as backfill as stipulated in Condition 2.d and 2.c shall be stored or disposed in self-contained areas with no discharge to waters of the State. Material shall be disposed of appropriately under the regulations at 35 Ill. Adm. Code Subtitle G.
- f. Pursuant to 35 Ill. Admin. Code Sections 395.401(b), 302.203 and 302.208, the use of directional drilling to install utility pipelines below surface waters of the State is hereby certified provided that:
  - i. All pits and other construction necessary for the directional drilling process are located outside of surface waters of the State;
  - ii. All drilling fluids shall be adequately contained such that they cannot cause a discharge to surface waters of the State. Such fluids shall be treated as stipulated in Condition 2.F; and
  - iii. Erosion and sediment control is provided in accordance with Conditions 2.B, 2.G, and 2.H.
- g. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(iii), 302.203 and 395.401(b), permanent access roads shall be constructed of clean coarse aggregate or non-erodible nonearthen fill material that will not cause siltation. Material excavated or dredged from the surface water or wetland shall not be used to construct the access road in waters of the state. The applicant for Nationwide Permit 12 that constructs access roads shall maintain flow in creeks, streams and rivers by installing culverts, bridges or other such techniques.
- h. Pursuant to 35 Ill. Admin. Code Section 395.401(b) and 302.203, adjacent banks and slopes disturbed by construction shall be stabilized immediately following construction. The applicant shall undertake necessary measures and procedures to eliminate stormwater channelization via the utility route during and after construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins, check dams, straw bales and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions.
- i. Pursuant to 35 Ill. Admin. Code Sections 395.401(b) and 302.203, asphalt, bituminous material and concrete with protruding material such as reinforcing bar or mesh shall not be 1) used for backfill, 2) placed on shorelines/stream banks, or 3) placed in waters of the State.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 13  
Bank Stabilization**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for bank stabilization activities that will exceed 1000 linear feet.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), asphalt, bituminous material and concrete with protruding material such as reinforcing bars or mesh shall not be:
  - a. used for backfill;
  - b. placed on shorelines/streambanks; or
  - c. placed in waters of the State.
3. Pursuant to 35 Ill. Admin. Code Sections 302.203, 302.208, and 395.401(b), the applicant shall consider installing bioengineering practices in lieu of structural practices of bank stabilization to minimize impacts to the lake, pond, river or stream and enhance aquatic habitat. The applicant shall document the selection process for the bank stabilization technique(s) and the basis for the selection of the bank stabilization practices. Bioengineering techniques may include, but are not limited to:
  - a. adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above;
  - b. vegetated geogrids;
  - c. coconut fiber (coir) logs;
  - d. live, woody vegetative cuttings, fascines or stumps;
  - e. brush layering; and
  - f. soil lifts.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 14  
Linear Transportation Projects**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities that cause loss of greater than 500 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities covered by this nationwide permit that include the temporary or permanent placement of steel or other painted structures within the waterbody as result of demolition work of previous structures.
3. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for new or expanded roadways that affect waterways which are designated by the State of Illinois as having water quality impairments caused by chloride. The most recent Illinois Integrated Water Quality Report and Section

303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>

4. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 15  
U.S. Coast Guard Approved Bridges**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities covered by this nationwide permit that include the temporary or permanent placement of steel or other painted structures within the waterbody as result of demolition work of previous structures.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for new bridges (not replacing another) that affect waterways which are designated by the State of Illinois as having water quality impairments caused by chloride. The most recent Illinois Integrated Water Quality Report and Section 303(d) List can be found at <https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx>

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 16  
Return Water from Upland Contained Disposal Areas**

1. Pursuant to the Illinois Environmental Protection Act Section 12(a) [415 ILCS 5/12(a)] and 35 Ill. Admin. Code Section 395.402(b)(2), applicants shall obtain a pollution control facility permit subject to 35 Ill. Admin. Code Subtitle C Part 309 Subpart B for construction and operation of the upland contained disposal area.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 17  
Hydropower Projects**

1. Pursuant to 35 Ill. Admin. Code Sections 395.401(b), an individual Section 401 water quality certification will be required for any project that is not previously approved by a Section 401 water quality certification issued by the Illinois EPA for a Federal Energy Regulatory Commission license or permit.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 23  
Approved Categorical Exclusions**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that will cause the loss of aquatic resources which exceed the lessor of ½ acres or 300 linear feet of stream channel as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for linear transportation activities covered by this nationwide permit which includes the temporary or permanent placement of painted steel or other painted structures within the waterbody as a result of related demolition work.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 27  
Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

1. Pursuant to the Illinois Environmental Protection Act Section 12(a)[415 ILCS 5/12(a)] and 35 Ill. Admin. Code Sections 395.401(a) and 395.401(b)(2), all activities conducted under this nationwide permit shall be in accordance with the provisions of 35 Ill. Adm. Code 405.108. Work in reclaimed surface coal mine areas are required to obtain prior authorization from the Illinois EPA for any activities that result in the use of acid-producing mine refuse.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 29  
Residential Developments**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for development activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.
3. Pursuant to 35 Ill. Admin. Code Section 395.402(b)(2), the applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 32  
Completed Enforcement Actions**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that involve carbon recovery (coal mining or coal remining) or materials that may be considered “acid-producing material”.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that include proposed (yet to be undertaken) loss of aquatic resources which exceed the lessor of ½ acres or 300 linear feet of stream channel as measured along the stream corridor.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 37  
Emergency Watershed Protection and Rehabilitation**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that will cause the loss of aquatic resources which exceed the lessor of ½ acres or 300 linear feet of stream channel as measured along the stream corridor.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 38  
Cleanup of Hazardous and Toxic Waste**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(b), a case-specific (individual) Section 401 water quality certification will be required for activities covered by this nationwide permit that do not require or will not receive authorization or approval from the Illinois EPA, Bureau of Land (BOL).
2. Pursuant to 35 Ill. Admin. Code Section 395.401(b), the applicant shall notify the Illinois EPA, Bureau of Water, Permit Section, of the specific activity. This notification shall include information concerning the orders and approvals that have been or will be obtained from the BOL, for all cleanup activities under BOL jurisdiction or for which authorization or approval is sought from BOL for no further remedial action.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 39  
Commercial and Institutional Developments**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for development activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.

2. Pursuant to 35 Ill. Admin. Code Section 395.402(b)(2), the applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, water treatment plants, wastewater treatment plants and related facilities prior to construction.
3. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.
4. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, and 395.401(b), for construction of oil and gas wells, the impacted waters of the State shall be restored to pre-construction conditions within six months after construction is started. For purposes of this condition, restoration includes stabilization and seeding or planting of vegetation on the disturbed areas that were vegetated prior to construction.

**ILLINOIS EPA WATER QUALITY CERTIFICATION**  
**SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 40**  
**Agricultural Activities**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION**  
**SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 42**  
**Recreational Facilities**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for development activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.
3. Pursuant to 35 Ill. Admin. Code Section 395.402(b)(2), the applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 43  
Stormwater Management Facilities**

1. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), the Agency hereby issues Section 401 water quality certification of Nationwide Permit 43 exclusively for the construction and maintenance of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act. All other activities authorized under this Nationwide Permit are denied Section 401 water quality certification. For purposes of this water quality certification green infrastructure means wet weather management approaches and technologies that utilize, enhance or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse. Green infrastructure approaches currently in use include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, porous and permeable pavements, porous piping systems, dry wells, vegetated median strips, reforestation/revegetation, rain barrels and cisterns and protection and enhancement of riparian buffers and floodplains. Material excavated, dredged or produced from the maintenance of green infrastructure features shall not be discharged to waters of the State.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for development activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
3. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.
4. Pursuant to 35 Ill. Admin. Code Section 395.402(b)(2), the applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMITS 44  
Mining Activities**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for development activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Section 395.402(b)(2), the applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.

3. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.
4. Except for off-site mitigation purposes, pursuant to 35 Ill. Admin. Code Section 404.101(a) and 395.402(b)(2), the activity shall be covered by either a Subtitle D: MINE RELATED WATER POLLUTION NPDES mining permit or State Construction and Operating Permit for mining activities covered by this water quality certification.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
REGIONAL CONDITIONS FOR NATIONWIDE PERMIT 51  
Land-Based Renewable Energy Generation Facilities**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Sections 302.203 and 395.401(b), any relocated stream channel authorized under this nationwide permit shall be constructed under dry conditions and allowed to fully stabilize prior to the diversion of flow to prevent erosion and sedimentation.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 52  
Water-Based Renewable Energy Generation Pilot Projects**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), 302.105(a) and 302.105(c)(2)(B), case-specific (individual) 401 water quality certification from the Illinois EPA will be required for activities covered by this nationwide permit that cause loss of greater than 300 linear feet of stream channel, as measured along the stream corridor.
2. Pursuant to 35 Ill. Admin. Code Section 395.401(b), an individual Section 401 water quality certification will be required for any hydrokinetic project that is not previously approved by a Section 401 water quality certification issued by the Illinois EPA for a Federal Energy Regulatory Commission license or permit.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
REGIONAL CONDITIONS FOR NATIONWIDE PERMIT 53  
Removal of Low-Head Dams**

1. Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.205 and 395.401(b), the applicant shall implement the following Best Management Practices and Material Testing:
  - a. Sediments and river bottom material are excavated and removed to upland areas to minimize sediment transport downstream, minimize downcutting and protect water quality; or

PUBLIC NOTICE ATTACHMENT 2 - DRAFT 401 Water Quality Certification

IEPA Log No. C-0210-20: DRAFT Special Conditions for Illinois EPA 401 Water Quality Certifications of Certain Nationwide Permits Regarding Federal Register [Docket Number: COE-2020-0002] Proposal to Reissue and Modify Nationwide Permits, September 15, 2020

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- b. measures shall be implemented to minimize sediment transport downstream; or
  - c. the sediments and river bottom materials that will be transported downstream are determined to have less than 20 percent passing a #230 U.S. Sieve based on representative sampling and analysis of the sediments and river bottom materials; or
  - d. a combination of the above practices to protect water quality; and
  - e. sediments and river bottom materials shall not be polluttional if released to downstream waters.
2. Pursuant to 35 Ill. Admin. Code Sections 302.105(c)(2)(B)(ii), 302.203, and 395.401(b), Best Management Practices shall be implemented to minimize sediment transport downstream, minimize downcutting of sediment and river bottom materials and protect water quality.
  3. Pursuant to 35 Ill. Admin. Code Section 395.401(a), the applicant shall notify downstream surface water supplies of the proposed dam removal. The applicant shall implement practices to prevent interference with Public and Food Processing Water Supply intakes. The Illinois EPA's Division of Public Water Supply may be contacted at 217/782-1020 for information on the Public and Food Processing Water Supplies.
  4. Pursuant to 35 Ill. Admin. Code Sections 302.203, 395.401(b) and 395.402(b)(2), any spoil material excavated, dredged or otherwise produced during dam removal activities must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency.

**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 54  
Living Shorelines**

1. Pursuant to 35 Ill. Admin. Code Section 395.401(a), an individual Section 401 water quality certification shall be required for any project that exceeds 1000 feet as measured along the bank or when the District Engineer waives the limitation of 30 feet as measured from the mean high water line.