Illinois Environmental Protection Agency
Bureau of Water, Permit Section
(IEPA)

1021 North Grand Avenue East, Post Office Box 19276, Springfield, Illinois 62794-9276, 217/782-3362

The IEPA has issued a Public Notice of a request for a Clean Water Act Section 401 water quality certification that would allow the issuance of a federal permit for the discharge of pollutants to waters of the State.

Public Notice Beginning Date:	**Public Notice Ending Date:**
Wednesday, May 1, 2024	Friday, May 31, 2024

Agency Log No.: C-0184-22

Federal Permit Information: Proffered by Chicago District, Regulatory Branch U.S. Army Corps of Engineers and as adopted by other USACE Districts in Illinois

Name and Address of Discharger: Permittees as would be eligible under the terms of the proffered General Permit

Discharge Location: Within areas of the State of Illinois approved for coverage by the federal permitting agency and as further limited or specified by the proffered General Permit and the herein discussed draft Illinois EPA water quality certification.

Name of Receiving Water: All surface waters within the USACE Chicago District

Project Name/Description: Letter of Permission for Residential, Commercial, Institutional, and Recreational Projects in Chicago District - The Chicago District (District) is proposing to implement Letter of Permission (LOP) procedures applicable to residential, commercial, industrial, and recreation developments to more efficiently authorize activities with minor impacts on the aquatic environment which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act (Section 404) and/or work or structures in navigable waters under Section 10 of the Rivers and Harbors Act of 1899 (Section 10).

Construction Schedule: Not identified

The Public Notice period will begin and end on the dates indicated in the heading of this Public Notice. Interested persons are invited to submit written comments on the project to the IEPA at the above address. Commenters must provide their name and address along with comments on the certification request. The IEPA Log number must appear on each comment page. Commenters may include a request for public hearing. Only hearing requests and comments that pertain to Clean Water Act Section 401 authority will be considered. This authority provides consideration of whether the permit or license would be consistent with Sections 301, 302, 303, 306, or 307 of the CWA, as well as "any other appropriate requirement of State [or tribal] law". Requests for additional comment period must provide a demonstration of need. The final day of comment acceptance will be on the Public Notice Ending date shown above, unless the IEPA grants an extended notice period. The attached Fact Sheet provides a detailed description of the project and the findings of the IEPA's antidegradation assessment.

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 see the contact information below.

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Post Document. No. C-0184-22-04292024-PublicNoticeAndFactSheet.pdf

The U.S. Army Corps of Engineers, Chicago District (District) is proposing to implement Letter of Permission (LOP) procedures to more efficiently authorize activities with minor impacts on the aquatic environment which involve discharges of dredged or fill material into waters of the United States (U.S.) under Section 404 of the Clean Water Act ("Section 404") and/or work or structures in navigable waters under Section 10 of the Rivers and Harbors Act of 1899 ("Section 10"). The proposed new LOP procedure is an optional abbreviated permit process available to all applicants applying for a Department of the Army (DA) permit for activities meeting the criteria and conditions described in the LOP including approved state water quality certification. If the proposed activity does not meet LOP criteria or the applicant chooses not to use this process, the activity may be authorized under a different permit program (Nationwide Permit, General Permit or Standard Individual Permit).

The LOP proposes to authorize certain categories of activity under Section 404 and if applicable, under Section 10. The proposed LOP's authorization under Section 404 includes discharges of dredged or fill material into non-tidal waters of the United States for the construction of residential, commercial, institutional, and recreational developments ('developments') and associated infrastructure, such as roads, utilities, and detention areas. Specific descriptions of activities for these categories are provided below and are identical to those used in the final rule published in the Federal Register (86 FR 2744) for the issuance of Nationwide Permits on January 13, 2021. Single and Complete projects authorized under the proposed Section 404 (or Section 10/404) LOP must result in the loss of no more than one (1) acre of waters of the U.S. The Agency's proposed water quality certification would apply only to activities authorized under Section 404 and would include further limitations, including limiting losses to waters of the U.S to no more than one (0.5) acres, as is discussed later in this document. Examples of activities that may qualify for a Section 10 LOP include, but are not limited to, maintenance dredging utilizing existing disposal sites for deposit of the dredged material, and structures such as docks and piers that do not meet the terms of a general permit.

Residential development includes the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This description includes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features are described as including but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

Commercial and Institutional development includes the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this LOP.

Recreational development includes the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this LOP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This LOP also authorizes

the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The proposed LOP indicates that the District may authorize projects with more than one acre of loss of open water if otherwise compliant with LOP procedures. Projects with more than one acre of loss to open water will be considered on a case-by-case basis under the LOP and the District reserves the use of its discretionary authority to require authorization under another permit type. The LOP requires that approved activities must not result in the loss of more than 1 acre of WOUS, though again, consistent with the Agency's determination made regarding the USACE Nationwide Permits that were published in the final rule in the Federal Register (86 FR 2744) on January 13, 2021, the Agency proposes to deny blanket coverage of water quality certification for any of the proposed activities that will result in the loss of WOUS or open waters in excess of 0.5 acres.

Potential load increases associated with residential, commercial, industrial, and recreational development construction activities resulting from the permanent discharge of dredged or fill materials into WOUS would be local and temporary. Other pollutant increases may result from temporary structures or work for crossings associated with proposed activities but would be local and temporary as well. The proposed activities may also produce long term pollutant loadings as a result of the potential shift toward non-natural land use practices that include landscape related agrichemical usage, impervious surface runoff, and other anthropogenic related waste streams.

For temporary structures, fills and work including the use of temporary mats, necessary to conduct the proposed activity and must be removed entirely. Affected areas must be restored to preconstruction elevations and be revegetated. In wetlands effected by temporary excavation for pipe or other underground installation, the excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during excavation.

Exposed slopes and stream banks must be stabilized immediately upon completion of the work. 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. 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 must be removed in their entirety and the affected areas must be restored to preconstruction elevations and be revegetated.

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

Typical construction related pollutant loading for residential, commercial, institutional, and recreational developments include elevated concentrations of total suspended solids that occur because of equipment and fill placement work within surface waters or within precipitation runoff from disturbed upland surfaces associated with the development. These pollutant loadings are temporary and are typically minimized through implementation of best management practices as outlined in site-specific stormwater or operations management plans developed to minimize impacts to water quality.

Development tends to produce stormwater runoff that does not absorb into the ground, rather it flows off impervious surfaces such as roads, parking lots and roof tops and creates greater potential for localized flooding during heavy rainfall. Not only does excess runoff from development carry with it the higher potential for erosion in receiving waterbodies but it can also transport many common pollutants that are found in the developed area's watershed. These pollutants commonly include nutrients, deicing compounds, pesticides, bacteria, metals, and petroleum-based hydrocarbons. These pollutant loadings together with increased temperature of runoff and decreased dissolved oxygen can negatively impact the

receiving stream's water quality and put additional stress on the health of the aquatic ecosystem. Adverse impacts to water quality and the aquatic ecosystem as a result of development shall be minimized through implementation of a stormwater management plan developed consistent with the Illinois Urban Manual or the local authority to incorporate prevention and/or treatment of on-going stormwater runoff from impervious surfaces.

For projects that include a discharge of pollutant(s) to waters for which there is an approved Total Maximum Daily Load (TMDL) allocation for any parameter, the applicant must develop plans and BMPs that are consistent with the assumptions and requirements in the approved TMDL. The applicant must incorporate into their plans and BMPs any conditions applicable to their discharges necessary for consistency with the assumptions and requirements of the TMDL within any timeframes established in the TMDL. The applicant must carefully document the justifications for all BMPs and plans, and install, implement, and maintain practices and BMPs that are consistent with all relevant TMDL allocations and with all relevant conditions in an implementation plan.

Identification and Characterization of the Affected Water Body.

The proposed LOP would regulate activities that may affect a variety water bodies within the boundaries of the U.S. Army Corps of Engineers (Corps) Chicago District. 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.

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.

All appropriate and practicable steps must first be taken to avoid and minimize impacts to aquatic resources. For unavoidable impacts which are considered more than minor, compensatory mitigation is required to replace the loss of wetland, stream, and/or other aquatic resource functions (33 CFR 332). Where an appropriate watershed plan is available, mitigation site selection should consider recommendations in the plan.

The Agency proposes to grant certification under CWA Section 401 for the activities described under the Chicago District's LOP procedures subject to the following terms and conditions:

Water quality certification pursuant to Section 401 of the federal Clean Water Act is hereby denied, and an individual (case-specific) water quality certification shall be required for any LOP issued as an authorization to carry out proposed activities, regardless of category, that would result in any of the following:

1. Permanent impacts to jurisdictional surfaces waters that, in the aggregate, cause the loss of greater than 0.5 acres of any open water body, stream, or wetland or adverse impact to greater than 300 linear feet of stream channel, as measured along the stream corridor. Enclosures of free flowing stream segments are also not approved, unless such enclosures are for transportation crossings associated with the proposed activity and are limited to 60 feet per crossing, measured along the stream corridor.

2. Discharge of dredged or fill materials 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.

3. Discharge of dredged or fill materials that may directly or indirectly result in the temporary or permanent increase of a pollutant parameter, such as suspended solids, chloride, or phosphorus, or deterioration of any water quality related parameter, such as dissolved oxygen, pH, and stream or flow alterations, where such parameter has been designated as a potential cause of water quality use impairment within the same waterbody segment as where the proposed discharge will occur. For purposes of this condition, water quality use impairments shall be determined by using the most recent Illinois Integrated Water Quality Report and Section 303(d) List found at https://www2.illinois.gov/epa/topics/water-quality/watershed-management/tmdls/Pages/303d-list.aspx.

Certification Conditions

1. State listed threatened and endangered species. 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). 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.

2. Permitted activities that may cause either a temporary or permanent discharge that 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, including which ensure consistency with the load allocations, assumptions and requirements of the TMDL report.

3. Pursuant to 35 Ill. Admin. Code Section 395.401(a), the applicant shall not cause:
   a. violation of applicable provisions of the Illinois Environmental Protection Act;
   b. water pollution defined and prohibited by the Illinois Environmental Protection Act;
   c. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
   d. interference with water use practices near public recreation areas or water supply intakes

4. Stormwater runoff.

   a. During construction and until permanent stabilization is established, the permittee shall implement all necessary sedimentation and erosion control measures consistent with the current "Illinois Urban Manual". Measures to prevent erosion during construction shall be taken and may include installation of sedimentation basins, silt fencing and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions, and all areas affected by construction shall be seeded and stabilized as soon after construction as possible.

b. The permittee 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 or more acres, total land area.

c. For development activities not subject to requirements of an existing Multiple Separate Storm Sewer System (MS4) permit or qualifying local program as defined at 40 CFR 122.34(c), a stormwater management plan shall be developed and implemented to address stormwater runoff from all impervious areas of development. The plan shall provide water quality treatment and erosion prevention to the maximum extent practicable to avoid pollutant loading associated with urban runoff and to reduce or delay peak flow and volume of runoff by holding stormwater on-site, encouraging infiltration, enhancing evapotranspiration, or similar practices consistent with drainage and detention principles in Nonpoint Source Pollution Control Processes and Planning Principles of the "Illinois Urban Manual" (https://illinoisurbanmanual.org/).

5. The permittee shall be responsible for obtaining all necessary permits to construct sanitary sewers, water mains, water treatment plants, wastewater treatment plants and related facilities prior to construction.

6. Permanent stream channel relocation activities shall be carefully planned in accordance with Construction Specification No. 760 of the "Illinois Urban Manual" or as otherwise necessary to ensure that a fully stabilized stream channel has been completed prior to the introduction of normal stream flows. All segments of the new stream channel including upstream and downstream transition points shall be capable of withstanding erosive forces of expected stream flows to prevent unnatural turbidity and sedimentation within and downstream of the project activity. Diversion of flow to the new channel shall be timed to coordinate with seasonal low flows to the maximum extent possible. Removal of water from the stream channel during development may be accomplished in accordance with Condition No. 10.

7. The permittee 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.

8. 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.

9. 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, prefabricated 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 flow diversion measures to maintain normal stream flow during construction. Temporary stream diversion activities shall incorporate Best Management Practices in accordance with Practice Standard for Dewatering (no. 976) of the "Illinois Urban Manual" or as otherwise appropriate to prevent side channel erosion, and to

ensure that adverse impacts to water quality, habitat, and aquatic life are minimized to the maximum extent possible. Wetlands that are that are temporarily impacted due to underground installations shall be backfilled to the extent practicable, with the upper six (6) to twelve (12) inches using wetland topsoil obtained during excavation.

10. 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". Practice Standard for Dewatering 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.

11. Any spoil material excavated, dredged, or otherwise produced, unless made expressly part of an engineered embankment or shoreline stabilization plan having stabilization practices sufficient to prevent its erosion into the waterbody and otherwise meet water quality standards, must not be returned to the water body but must be deposited in a self-contained area in compliance with all state statutes. 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.

Compensatory mitigation for permanent losses of surface waters and aquatic habitat would be required in accordance with the LOP's general conditions. Compensatory mitigation at a minimum one-to-one ratio will be required for all wetland losses that exceed 1/10-acre, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal. For wetland losses of 1/10 acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation at a minimum one-to-one ratio will be required for all losses of stream bed that exceed 3/100-acre, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse environmental effects of the proposed activity are no more than minimal. For losses of stream bed of 3/100-acre or less, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to replace resources (see 33 CFR 332.3(e)(3))

Purpose and Social & Economic Benefits of the Proposed Activity.

The Chicago District is proposing to implement Letter of Permission (LOP) procedures to more efficiently authorize activities with minor impacts on the aquatic environment which involve discharges of dredged or fill material into WOUS under Section 404 of the Clean Water Act and/or work or structures in navigable waters under Section 10 of the Rivers and Harbors Act of 1899.

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

The review of the activities allowed under the proposed LOP and general 401 water quality certification finds that the conditions and limitations defined by the proposed LOP and the draft 401 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.

Summary Comments of the Illinois Department of Natural Resources, Regional Planning Commissions, Zoning Boards or Other Entities.

If the activity may affect Federally listed species or critical habitat, Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) in accordance with the Endangered Species Act of 1973, must be initiated. Applicants must provide additional information that would enable the District to conclude that the proposed action will have no effect on Federally listed species or designated critical habitat.

The LOP will require proof that the proposed activity has undergone consultation with the Illinois Department of Natural Resources via the Ecological Compliance Assessment Tool (EcoCAT) prior to issuance of the general permit.

Agency Conclusion.

This preliminary assessment in regard to issuance of CWA Section 401 water quality certification with conditions for the U.S. Army Corps of Engineers Letter of Permission 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 the proposed certification conditions and terms and conditions of the proposed LOP, 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.