

**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:

Thursday, March 20, 2025

Public Notice Ending Date:

Friday, April 18, 2025

Agency Log No.: C-0065-25

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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401 Water Quality Certification Fact Sheet for Chicago District LOP

IEPA Log No. C-0065-25

Contact: Angie Sutton 217-782-9864

The Chicago District (District) is proposing to modify the procedures of the Chicago District's Letter of Permission (LOP) issued on June 11, 2024, under Log # C-0184-22, to include specific conditions for water quality certification. The special conditions are applied to bank stabilization and are outlined separately below under the section header “Fate and Effect of Parameters Proposed for Increased Loading” of this memo.

The 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 herein. 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).

Proposed activities to be authorized under these Letter of Permission Procedures include projects subject only to Section 10, when the District has determined the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. 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. This also includes projects subject to Section 404, and if applicable, Section 10 which may be approved under residential, commercial and institutional, and recreational projects.

The LOPs are an alternative permit process to NWP, RGP and standard permits.

Residential Development:

This LOP authorizes discharges of dredged or fill material into nontidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This LOP authorizes 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 may include 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).

According to the LOP, the discharge must not cause the loss of greater than 1 acre of non-tidal waters of the United States. This LOP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters, however our certification will limit the impact are to ½ acre.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this LOP cannot exceed ½ acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Commercial and Institutional Developments:

This LOP authorizes discharges of dredged or fill material into non-tidal waters of the United States for 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 NWP.

According to the LOP, the discharge must not cause the loss of greater than 1 acre of non-tidal waters of the United States. This LOP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters, however our certification will limit the impact are to ½ acre.

Recreational Facilities:

This LOP authorizes discharges of dredged or fill material into non-tidal waters of the United States for 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.

According to the LOP, the discharge must not cause the loss of greater than 1 acre of non-tidal waters of the United States. This LOP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters, however our certification will limit the impact are to ½ acre.

Single and Complete projects authorized under a Section 404 (or Section 10/404) LOP must result in the loss of no more than ½ acre of waters of the U.S.

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.

Potential load increases associated with residential, commercial, industrial, and recreational development 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. As 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, 6-12 inches should be backfilled with topsoil from the trench and backfill methods cannot drain WOUS. Development must not result in the loss of more than 1 acre of WOUS. 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.

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 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.

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 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 be fully protective of all existing uses, and impacts will be mitigated at 0.1 Ac for wetlands, and 0.3 Ac for streams.

Activities described under the Chicago District's LOP procedures apart from those activities which must obtain case-specific water quality certification as outlined above or for those permit applicants that do not accept or cannot meet the following General Conditions, are hereby granted water quality certification subject to conditions pursuant to Section 401 of the federal Clean Water Act provided that the following twelve (12) water quality based conditions are incorporated into the federal authorization pursuant to CWA Section 404:

1. 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 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. 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. The permittee shall implement all necessary sedimentation and erosion control measures consistent with the current edition of the "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.
5. 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.
6. The permittee shall be responsible for obtaining necessary permits to construct sanitary sewers, water mains, water treatment plants, wastewater treatment plants and related facilities prior to construction.
7. 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.

The special conditions for streambank stabilization activities for 401 WQC to the LOP are as follows:

1. Pursuant to 35 Ill. Admin. Code Sections 395.401(a) and 302.105(c)(2)(B), a 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:
 - used for backfill;
 - placed on shorelines/streambanks; or
 - 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:

- adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above;
- vegetated geogrids;
- coconut fiber (coir) logs;
- live, woody vegetative cuttings, fascines or stumps;
- brush layering; and
- soil lifts.

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 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.

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 401 water quality certification issuance 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 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.