

Questions and Answers concerning Illinois EPA's 12/17/2025, CWA 401 Certification of NWP's

1. Does IEPA have a process in place for reviewing these certifications?

We are in the process of developing procedures that would result in a potential streamlined 401 certification process for certain activities affected by Illinois EPA's 2026 water quality certification for the Nationwide Permits. We expect that this will ease the Agency's workflow which is anticipated to increase significantly; however, this streamlined approach does not remove the need for the Agency to conduct public notice and to conduct the appropriate analysis to determine all water quality related requirements have been met.

2. What will IEPA require for submittal?

If the project is identified as a candidate for a potential streamlined approach, such baseline information requirements would consist of the following:

- **Generic project information including the method of waterbody crossing and nature of waterbody impacts.**
- **T&E consultation confirmation.**
- **Full description of all permanent and temporary impacts for both jurisdictional and non-jurisdictional waters.**
- **Wetland delineation or at a minimum ORAM rapid assessment.**
- **Permanent impacts to jurisdictional and non-jurisdictional wetlands depicted in context of total wetland sizes and**
- **Stream assessment or at a minimum QHEI rapid assessment.**
- **Other information necessary to characterize the waterbody including stream watershed area, bank-full width, and characterization of the approach terrain within 500ft of a waterbody being crossed.**
- **SWPPP when deemed necessary.**
- **Temporary impact mitigation plans with 2-year monitoring.**
- **Permanent impact mitigation plans when required.**
- **Characterization of permanent and temporary riparian and wetland buffers impacts and appropriate restoration plans.**

Generally, antidegradation assessment requirements will be satisfied by providing applicable resource assessments and providing evidence that the least environmentally damaging alternatives to the proposed plan, including HDD, have been thoroughly considered and determined to be infeasible.

3. What is IEPA's timing for reviewing?

Once procedures are in place we hope to be able to provide final determinations within 2 -4 months; however, in the near term Illinois EPA may need to rely on a longer period up to the 12 month period granted by the CWA.

4. Does IEPA have staff assigned to this?

Existing Agency staff are ready to adjust workloads to handle this workflow.

5. Why is this necessary when there is already the construction stormwater permit requirement?

The limitations that were implemented in the 401 water quality certification issued on December 17, 2025, for the Nationwide Permits follow from an analysis of Corps of Engineer's permitting practices under the Nationwide Permits. For perspective, IEPA's blanket certification found within CWA Section 404 general permits is granted based on the understanding that permitted activities are of the kind that would have no more than a minimal adverse environmental impact and would thereby satisfy antidegradation and other water quality requirements. In fact, CWA section 404(e) includes the requirement to authorize activities that will have no more than "minimal adverse environmental effects," either individually or cumulatively.

It is this statutory requirement that primarily undergirds Illinois EPA's participation in all USACE general permits, and it forms the primary basis for our determinations that covered activities meet applicable water quality standards including antidegradation requirements.

The assurance that this assumption is applicable to every grant of general water quality certification is found in the limitations, thresholds and conditions of a given Nationwide Permit as well as our own special conditions included with the certification.

Now, we have evaluated concerns that were brought to light in previous NWP renewal years and again in 2025 concerning the requirement for NWPs to comply with the single and complete requirement under 33 C.F.R. § 330.6(c). Based on this evaluation it was determined that greater oversight of activities that fall under NWP 12, 57, and 58 was necessary to ensure that overall projects with multiple impacts can actually be considered to have minimal adverse impacts.

6. Were proper procedures followed in adopting the conditions?

35 Ill. Adm. Code Part 395 are the implementing regulations for Illinois EPA's 401 program. Federal regulations under 40 CFR Part 121 provide guidance for the development of certification conditions. Neither sets of rules or the CWA Section 401 provide explicit guidance for condition development. The type of conditions used are consistent with past practices and represent the scale of projects that the Illinois EPA finds consistent with its understanding of minimal adverse environmental impact.

7. How was the public notice distributed to make sure stakeholders impacted by the changes from the previous NWP 401 Water Quality Certification (WQC) program were given adequate time and opportunity to comment?

Public notice was given via public notice on the Agency's website for a 30 day period.

8. Why was condition 1.a. added? This condition is entirely new compared to the previous 401 blanket WQC that was issued on 12/11/2020.

See above responses.

9. Why was a "total of 4.5 miles" identified as the threshold for condition 1.a?

The specific distance criteria used in the conditions were developed based in part on the average land area for HUC12 watersheds in Illinois. Derivative dimensions used as actual criteria represent the Agency's best professional judgement concerning the scale of projects that are significantly more likely to have greater adverse impacts to waters resulting from the associated land disturbance that occur adjacent to the regulated activity. Hence, these criteria are indicators of the scale of a project and are thereby fitting for determining appropriateness of blanket certification coverage.

10. Why do the limitations include disturbance in upland areas considering the USACE NWP Program only regulates impacts to "waters of the U.S."? In other words, why does condition 1.a. cover the entire project area and not just aquatic or a buffer/riparian areas at aquatic resources? In the previous 401 WQC for NWP issued on Dec. 11, 2020, conditions only applied to aquatic areas. Impacts to entire project activities over 5 acres are already regulated by NPDES construction stormwater permitting (ILR10).

The criteria for applicability of Illinois EPA's blanket certification should be distinguished from the scope of actual certification review. The Agency has considerable discretion in blanket WQC denial decisions but is somewhat constricted by CWA and applicable federal rules in case-specific denial of water quality certification. For instance, IEPA declines to certify all blanket coverage of cranberry production or impacts caused by mining. In the case of linear projects, we have opted, for reasons discussed above, to curtail usage of general certification to a greater degree than we have done previously and for reasons that are somewhat unfamiliar, but well within our authority.

11. Why was condition 1.e. added?

Use of uncured concrete products such as grouts or bags present hazards to water quality during emplacement which are not appropriate for blanket 401 coverage. Individual project reviews must be undertaken to determine that effects on the receiving stream that may include elevated pH, heavy metals, and TSS are minimized and do not violate effluent standards or water quality standards.

13. What factors led to the impact limits requiring an individual 401 WQC if exceeded?

IEPA received at least two written requests to consider the factors discussed above. The requests were made well in advance of the Agency's public notice procedures and the information provided was relevant and sufficiently convincing to warrant a reevaluation of past practices.

14. Are there specific examples of why these impact limits would be needed?

Some of this information was discussed above but there has been at least one pipeline project that was involved in severe degradation of streams that were crossed because of concentrated erosion.

15. Why were the impact limits requiring an individual 401 WQC if exceeded changed from 4.5 miles in the public notice to 5 acres and 1.5 miles in the final 401 WQC?

Changes were made based on comments received during the public notice. These comments indicated that the public noticed criteria was not sufficiently restrictive. Ultimately, based on reevaluation of data was underlying the original criteria, the Agency decided to include the new criteria.

16. Were the impacts of instituting new, more restrictive, requirements considered in comparison to the overall benefits of this change to water quality from a perspective of cost to utilities and ability to provide timely service to customers?

There is no requirement for such analysis in Statute or Illinois Pollution Control Board Rules that apply to Section 401 water quality certification decisions issued by the Illinois EPA.

17. How will the IEPA fund and staff increase in 401 WQCs that will result from the additional special conditions?

The streamlined review processes that were discussed previously are expected to mitigate most of the increased workflow. However, adjustments to staffing levels have also been made and will continue to be adjusted on an as-needed basis once actual workflow changes occur.

18. The public notice (pages 3-6) notes that the USACE issued 831 permits under NWP 12, 57 and 58 from February 25, 2022, to Aug 31, 2025. Assuming this number will hold steady or increase, how many additional individual 401 WQC applications does the IEPA anticipate due to the special conditions added to the 2026 NWP 401 WQC?

We are aware of the significant increase in individual certification reviews that will be necessary. As discussed previously we are prepared to address all of applications in an equitable manner consistent with the Clean Water Act and best professional judgement. Illinois EPA did not independently verify the permit numbers provided to it by the Army Corps of Engineers.

19. What is the process for submitting applications for individual 401 WQCs?

This process is described under 40 CFR 121 Sections 121.4 and 121.5 (<https://www.federalregister.gov/documents/2023/09/27/2023-20219/clean-water-act-section-401-water-quality-certification-improvement-rule#p-amd-1>). In Illinois, applicants may submit their applications to epa.401.bow@illinois.gov or send to the following address. The Illinois EPA will receive and then respond to your application in accordance with 40 CFR 121.4 acknowledging that the information submitted is a pre-filing meeting request. During this period the applicant may coordinate with the Illinois EPA regarding what information would be necessary to be considered a complete application.

20. Is the process for submitting applications for individual 401 WQCs being streamlined to accommodate the likely influx of 401 WQC applications that will result from the special conditions added to the 2026 NWP 401 WQC?

See discussion above.

21. What is the current standard turnaround time for issuing individual 401WQCs from application submittal?

Typical processing times for individual reviews range from 90 days to 150 days depending on complexity of the project.

22. How does the IEPA anticipate this turnaround time will be affected due to the special conditions added to the 2026 NWP 401 WQC?

Initially the response times can be expected to be significantly higher when increased numbers of applications are received.

23. Concerning NWP 16 Special Condition (b) – waters designated as public and food processing water supplies with surface intake facilities. What if the water intake is for using the water to generate power, not to provide drinking water or produce food? Does the SC apply under this scenario?

According to the Illinois Pollution Control Board's rules at 35 Ill. Adm. Code Sections 303.202 and 303.442, Public and Food Processing Water Supplies are at any point within waters of the State where water is withdrawn for treatment and distribution as a potable supply or for food processing; however, this category of waters is not applicable to the Chicago River and the Little Calumet River. Waters used for withdrawal only for reasons such as power generation would not be subject to this limitation.

24. Further, Special Condition (d) – dredging activities that would result in upland placement of more than 125,000 cubic yards of material or would produce effluent discharge on a recurring basis for a period lasting more than 5 years. Can IEPA define recurring basis? Is every year

recurring? We do have applicants who need to dredge every year or every other year. Does the SC apply under this scenario?

Recurring discharge is intended to mean a dredge related dewatering discharge that occurs during more than one distinct dredging event. This limitation is intended to require an individual certification when the application indicates such discharge is going to persist for greater than 5-years.

25. Concerning NWP 14 Special Condition (2) - would result in the enclosure or encapsulation of any portion of a free-flowing stream. Without a definition of encapsulation or free-flowing stream, it's difficult to make the call. We have many applications for new driveways or access roads which require a new culvert over a channel, which at that location would be considered "free flowing" because there is currently no culvert. Can we have an understanding that culverts under 100 feet do not result in enclosure or encapsulation and anything over does? Or, does any culvert of any size meet the definition of encapsulation?

Free flowing is intended to describe a stream that is allowed to meander naturally within its floodway or is otherwise not constrained to a channelized stream corridor. Therefore, this limitation on coverage would not apply to roadside drainage ditches or streams that have been demonstrably channelized for agricultural or other development purposes. To be consistent with all other NWP conditions such as those for commercial, institutional, residential, and recreational development, the Illinois EPA has determined that a 30-foot impact as measured along the stream corridor is an appropriate limitation for NWP 14.

26. Can the Agency provide clarify on what the term "Project Corridor" means as it is used in the 2026 NWP 401 certifications.

For purposes of Special Condition 1(a) of the Illinois EPA Clean Water Act Section 401 certification issued for NWP 12, the term project corridor means the linear expanse between beginning and ending points of a construction activity that is generally continuous and undertaken under a common plan. Continuous land disturbance, however, is not necessary to define a project corridor as in the example of pylon installation for electrical transmission lines or the intermittent pit excavation for HDD operations. Also, Special Condition 1(a)(iii) is not intended to apply to any discrete construction activity that occurs at or along an existing linear utility as long as it is not reasonably considered part of a common construction plan.