



# Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

February 18, 2026

SUBJECT FAP Route 846 (IL 53)  
Project NHPP-GCQJ(861)  
Section 2021-064-CR  
Will County  
Contract No. 62P01  
Item No. 004, February 27<sup>th</sup>, 2026, Letting  
Addendum B

## NOTICE TO PROSPECTIVE BIDDERS:

Attached is an addendum to the plans or proposal. This addendum involves revised and/or added material.

1. Revised the Schedule of Prices.
2. Added page iii to the Table of Contents to the Special Provisions.
3. Added pages 158-223 to the Special Provisions.
4. Revised sheets 3, 6, 10, 88, 100, & 110 of the Plans.

Prime contractors must utilize the enclosed material when preparing their bid and must include any changes to the Schedule of Prices in their bid.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack A. Elston".

Jack A. Elston, P.E.  
Bureau Chief, Design and Environment

MTS

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Added 2/18/2026

## REMOVAL AND DISPOSAL OF REGULATED SUBSTANCES (PROJECT SPECIFIC)

**Description.** This work shall consist of the removal and disposal of regulated substances according to Section 669 of the Standard Specifications as revised below.

**Contract Specific Sites.** The excavated soil and groundwater within the areas listed below shall be managed as either “uncontaminated soil”, hazardous waste, special waste or non-special waste. For stationing, the lateral distance is measured from centerline and the farthest distance is the offset distance or construction limit, whichever is less.

**Soil Disposal Analysis.** When the waste material requires sampling for landfill disposal acceptance, the Contractor shall secure a written list of the specific analytical parameters and analytical methods required by the landfill. The Contractor shall collect and analyze the required number of samples for the parameters required by the landfill using the appropriate analytical procedures. A copy of the required parameters and analytical methods (from landfill email or on landfill letterhead) shall be provided as Attachment 4A of the BDE 2733 (Regulated Substances Final Construction Report). The price shall include all sampling materials and effort necessary for collection and management of the samples, including transportation of samples from the job site to the laboratory. The Contractor shall be responsible for determining the specific disposal facilities to be utilized; and collect and analyze any samples required for disposal facility acceptance using a NELAP certified analytical laboratory registered with the State of Illinois.

### Site 3737V-3: Railroad - 26800-28900 blocks of S. IL 53, Elwood, Will County

- Station 303+60 to Station 305+00 (CL IL 53 median), 50 to 85 feet LT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Lead and Manganese.
- Station 311+90 to Station 314+45 (CL IL 53 median), 0 to 50 feet LT and 0 to 30 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(5). Contaminants of concern sampling parameters: Arsenic and Manganese.
- Station 320+80 to Station 324+15 (CL IL 53 median), 35 to 85 feet LT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(3). Contaminants of concern sampling parameters: Benzo(a)pyrene.
- Station 324+15 to Station 327+10 (CL IL 53 median), 30 to 85 feet LT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(2). Contaminants of concern sampling parameters: Arsenic.
- Station 327+10 to Station 330+80 (CL IL 53 median), 30 to 85 feet LT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(5). Contaminants of concern sampling parameters: Arsenic and Iron.

Site 3737V-8: Midewin National Tallgrass Prairie, 30239 S. IL 53, Elwood, Will County

- Station 299+80 to Station 303+00 (CL IL 53 median), 30 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Manganese
- Station 304+90 to Station 306+55 (CL IL 53 median), 30 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(2). Contaminants of concern sampling parameters: Arsenic.
- Station 308+20 to Station 310+00 (CL IL 53 median), 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(2). Contaminants of concern sampling parameters: Arsenic.
- Station 310+00 to Station 311+95 (CL IL 53 median), 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Manganese.
- Station 319+95 to Station 321+95 (CL IL 53 median), 30 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Benzo(a)pyrene and Manganese.
- Station 323+95 to Station 326+00 (CL IL 53 median), 30 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Manganese.
- Station 326+00 to Station 327+95 (CL IL 53 median), 30 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(1). Contaminants of concern sampling parameters: Iron.
- Station 330+00 to Station 332+05 (CL IL 53 median), 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(3). Contaminants of concern sampling parameters: Benzo(a)pyrene and Dibenz(a,h)anthracene.
- Station 337+40 to Station 339+00 (CL IL 53 median), 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(3). Contaminants of concern sampling parameters: Benzo(a)pyrene.
- Station 339+00 to Station 341+65 (CL IL 53 median), 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(5). Contaminants of concern sampling parameters: Methylene chloride.

Site 3737V-9: Grant Creek, 28000 block of S. IL 53, Elwood, Will County

- Station 306+55 to Station 308+20 (CL IL 53 median), 0 to 20 feet LT and 0 to 125 feet RT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(5). Contaminants of concern sampling parameters: Arsenic.
- Station 306+90 to Station 308+20 (CL IL 53 median), 20 to 85 feet LT. The Engineer has determined this material meets the criteria of and shall be managed in accordance with Article 669.05(a)(5). Contaminants of concern sampling parameters: Arsenic.

**Work Zones**

Three distinct OSHA HAZWOPER work zones (exclusion, decontamination, and support) shall apply to projects adjacent to or within sites with documented leaking underground storage tank (LUST) incidents, or sites under management in accordance with the requirements of the Site Remediation Program (SRP), Resource Conservation and Recovery Act (RCRA), or Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or as deemed necessary. For this project, the work zones apply for the following ISGS PESA Sites:

**None**

**STORM WATER POLLUTION PREVENTION PLAN**



**Storm Water Pollution Prevention Plan**

Route	Marked Route	Section Number
FAP 846	IL 53	2021-064-CR
Project Number	County	Contract Number
NHPP-GCQJ(861)	WILL	62P01

This plan has been prepared to comply with the provisions of the National Pollutant Discharge Elimination System (NPDES) Permit No. ILR10 (Permit ILR10), issued by the Illinois Environmental Protection Agency (IEPA) for storm water discharges from construction site activities.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Permittee Signature & Date

 12.12.2025

**SWPPP Notes**

Preparing BDE 2342 (Storm Water Pollution Prevent Plan)

Guidance on preparing each section of BDE 2342 (Storm Water Pollution Prevention Plan) is found in Chapter 41 of the IDOT Bureau of Design and Environment (BDE) Manual, please consult this chapter during SWPPP preparation. Please note that the Illinois Environmental Protection Agency (IEPA) has 30 days to review the Notice of Intent (NOI) prior to project approval and any deficiencies can result in construction delays.

The Notice of Intent contains the following documents:

- BDE 2342 (Storm Water Pollution Prevention Plan)
- BDE 2342 A (Contractor Certification Statement)
- Erosion and Sediment Control Plan (See Section 63-4.09 of the BDE Manual)

Non-applicable information

If any section of the SWPPP is not applicable put "N/A" in box rather than leaving blank.

**National Pollutant Discharge Elimination System (NPDES) Compliance**

**Description of Work:** This work shall consist of those efforts necessary for compliance with the requirements of the Clean Water Act, Section 402 (NPDES), and the Illinois Environment Protection Act. This provision also provides the background information needed to comply with ILR10 and ILR40 permits for this project.

**NPDES COMPLIANCE REQUIREMENTS**

**Part I: Site Description**

1. Describe the project location; include latitude and longitude, section, town, and range.

IL 53 in Will County, IL. Section 31, Township 34N, Range 10E ; 41°23'4.28"N 88° 7'21.87"W

The design, installation, and maintenance of BMPs at these locations are within an area where annual erosivity (R value) is less than or equal to 160. Erosivity is less than 5 in all two-week periods between October 12 and April 15, which would qualify for a construction rainfall erosivity waiver under the US Construction General Permit requirements. At these locations, erosivity is highest in spring to autumn, April 16 - October 11."

2. Describe the nature of the construction activity or demolition work.

Construction activity and Demolition work includes the removal of existing culvert and replacement thereof, construction phasing, and temporary lighting.

The construction staging will require 3 main stages, with a prestage before stages 1 and 2. The culvert must be constructed in stages so temporary crossovers will be utilized. The prestages are necessary to construct the temporary crossovers. Stage 1 will include partial culvert replacement and grading of side slopes. Stage 2 includes replacing the rest of the culvert, side slope grading, and installation of riprap along the WOUS near Hoff Rd. Stage 3 will include final median grading.

The drainage improvements within the project area will include channelization and improvements of existing ditches, and replacement of the existing culvert under IL-53 with over double the capacity. The improved culvert will allow for greater flow rates with lower flow velocities and also provide an embedded culvert to facilitate improved condition for local fauna.

In-stream work will be limited to the construction necessary to construct the new culvert, including grading and placement of riprap as noted on the plans. Additional in-stream work will take place near Hoff Rd. where riprap is being added to the ditch.

3. Describe the intended sequence of major activities which disturb soils for major portions of the site (e.g. clearing, grubbing, excavation, grading, on-site or off-site stockpiling of soils, on-site or off-site storage of materials).

Prestage site preparation including clearing and grubbing, temporary pavement to be installed, followed by shifting of traffic to accommodate installation of approximately half of the proposed box culvert system. Further temporary pavement will be placed to allow for construction of the other half of the culvert. Installation of erosion control measures at each stage will be undertaken prior to the start of work in that phase. Regrading of side slopes will take place in stage 1 and stage 2 as well to achieve recoverable slopes. Upon completion of the work in each stage, the grading at the temporary pavement locations will be restored to existing grades. Permanent stabilization within flow areas will include Riprap where required, and vegetation to be restored on slopes in permanent condition.

4. The total area of the construction site is estimated to be 25.0 acres.

5. The total area of the site estimated to be disturbed by excavation, grading or other activities is 8.2 acres.

6. Determine an estimate of the runoff coefficient of the site after construction activities are completed.

C = 0.71 (proposed); C=0.71 (existing)

7. Provide the existing information describing the potential erosivity of the soil at discharge locations at the project site.

The existing embankment that supports the roadway passing over the culvert is scheduled for improvement. This work is being undertaken specifically in response to observed erosion issues, which have been identified near the downstream section of the culvert. The erosion in this area has raised concerns about the long-term stability and integrity of the embankment, prompting the need for targeted enhancements. By addressing these erosion concerns, the project aims to reinforce the embankment and ensure continued safe passage over the culvert.

At the southeast corner of the IL-53 and Hoff Rd. intersection, along IL-53, the existing ditch will be regraded with

riprap added to improve roadway stability and reduce erosion of the roadway embankment. The culvert is in a state of disrepair and the existing analysis shows flow velocity in excess of 11 ft/s in even just the 10 year event. This is far beyond the required flow velocity less than 10ft/s.

8. Erosion and Sediment Control Plan (Graphic Plan) is included in the contract.  Yes  No

9. List all soils found within project boundaries; include map until name, slope information, and erosivity.

146B	Elliott silt loam	2 to 4 percent slopes
223C2	Varna silt loam,	4 to 6 percent slopes, eroded
232A	Ashkum silty clay loam,	0 to 2 percent slopes
298B	Beecher silt loam,	2 to 4 percent slopes
530C2	Ozaukee silt loam,	4 to 6 percent slopes, eroded
531C2	Markham silt loam,	4 to 6 percent slopes, eroded

10. List of all MS4 permittees in the area of this project.

Will County

Note: For sites discharging to an MS4, a separate map identifying the location of the construction site and the location where the MS4 discharges to surface water must be included.

### Part II: Waters of the US

1. List the nearest named receiving water(s) and ultimate receiving waters.

Grant Creek, DesPlaines River

2. Are wetlands present in the project area?  Yes  No

If yes, describe the areal extent of the wetland acreage at the site.

WOUS OSW1 (Grant Creek) 0.02 AC / 0.02+ AC  
 WOUS WS1 (Grant Creek Tributary) 0.12 AC / 0.19+AC

3. Natural buffers:

For any storm water discharges from construction activities within 50 feet of a Waters of the United States, except for activities for water-dependent structures authorized by a Section 404 permit, the following shall apply:

(i) A 50-foot undisturbed natural buffer between the construction activity and the Waters of the United States has been provided

Yes  No; and/or

(ii) Additional erosion and sediment controls within that area has been provided

Yes  No; and Describe: Erosion Control Blanket, Ditch Checks, Perimeter Erosion Barrier, RipRap Placement

### Part III. Water Quality

#### 1. Water Quality Standards

As determined by the Illinois Pollution Control Board, Illinois waters have defined numeric limits of pollutants under the umbrella term "Water Quality Standards." In the following table are commonly used chemicals/practices used on a construction site. These chemicals if spilled into a waterway, could potentially contribute to a violation of a Water Quality Standard. If other chemicals that could contribute a violation of a Water Quality Standard, add as needed.

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Fertilizer (check as appropriate) | <input checked="" type="checkbox"/> Petroleum (gas, diesel, oil, kerosene, hydraulic oil / fluids) |
| <input checked="" type="checkbox"/> Nitrogen                          | <input checked="" type="checkbox"/> Waste water for concrete washout station                       |
| <input checked="" type="checkbox"/> Phosphorus, and/or                | <input type="checkbox"/> Coal tar Pitch Emulsion   |
| <input checked="" type="checkbox"/> Potassium                         | <input type="checkbox"/> Other (Specify) <u>N/A</u>  |
| <input checked="" type="checkbox"/> Herbicide                         | <input type="checkbox"/> Other (Specify) <u>N/A</u>  |

Table 1: Common chemicals/potential pollutants used during construction

If no boxes are checked in Table 1 above, check the following box:

- There are no chemicals on site that will exceed a Water Quality Standards if spilled.

If any boxes are checked in Table 1 above, check the following box:

- There are chemicals on site that if spilled could potentially cause an exceedance of a Water Quality Standard. The Department shall implement Pollution Prevention/Good Housekeeping Practices as described in the Department's ILR40 Discharge for Small
- Municipal Separate Storm Sewer Systems (MS4) reiterated below and Part VIII. Unexpected Regulated Substances/Chemical Spill Procedures:

Pollution Prevention:

The Department will design, and the contractor shall, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants from construction activities. At a minimum, such measures must be designed, installed, implemented and maintained to:

- (a) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge.
- (b) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, chemical storage tanks, deicing material storage facilities and temporary stockpiles, detergents, sanitary waste, and other materials present on the site exposed to precipitation and to storm water.
- (c) Minimize the discharge of pollutants from spills, leaks and vehicle and equipment maintenance and repair activities and implement chemical spill and leak prevention and response procedures;
- (d) Minimize the exposure of fuel, oil, hydraulic fluids, other petroleum products, and other chemicals by storing in covered areas or containment areas. Any chemical container with a storage of 55 gallons or more must be stored a minimum of 50 feet from receiving waters, constructed or natural site drainage features, and storm drain inlets. If infeasible due to site constraints, store containers as far away as the site permits and document in your SWPPP the specific reasons why the 50-foot setback is infeasible and how the containers will be stored.
- (e) The contractor is to provide regular inspection of their construction activities and Best Management Practices (BMPs). Based on inspection findings, the contractor shall determine if repair, replacement, or maintenance measures are necessary in order to ensure the structural integrity, proper function, and treatment effectiveness of structural storm water BMPs. Necessary maintenance shall be completed as soon as conditions allow to prevent or reduce the discharge of pollutants to storm water or as ordered by the Engineer. The Engineer shall conduct inspections required in Section XI Inspections, and report to the contractor deficiencies noted. These Department conducted inspections do not relieve the contractor from their responsibility to inspect their operations and perform timely maintenance; and
- (f) In addition, all IDOT projects are screened for Regulated Substances as described in Section 27-3 of the BDE Manual and implemented via Section 669: Removal and Disposal of Regulated substances in the Standard Specifications for Road and Bridge Construction.

Approved alterations to the Department's provided SWPPP, including those necessary to protect Contractor Borrow, Use and Waste areas, shall be designed, installed, implemented and maintained by the Contractor in accordance with IDOT Standard Specifications Section 280.

**2. 303(d) Impaired Waterways**

Does the project area have any 303(d) impaired waterways with the following impairments?

- suspended solids
- turbidity, and or
- siltation

Yes  No

If yes, list the name(s) of the listed water body and the impairment(s)

303(d) waterbody	Impairments(s)
N/A	N/A
N/A	N/A
N/A	N/A

In addition, it is paramount that the project does not increase the level of the impairment(s) described above. Discuss which BMPs will be implemented to reduce the risk of impairment increase

N/A

**3. Total Maximum Daily Load (TMDL)**

Does the project include any receiving waters with a TMDL for sediment, total suspended solids, turbidity or siltation?  Yes  No

If yes, List TMDL waterbodies below and describe associated TMDL

TMDL waterbody	TMDL
N/A	N/A
N/A	N/A
N/A	N/A

Provide a description of the erosion and sediment control strategy that will be incorporated into the site design that is consistent with the assumptions and requirements of the TMDL

N/A

If a specific numeric waste load allocation has been established that would apply to the project's discharges, provide a description of the necessary steps to meet that allocation

N/A

**Part IV. Temporary Erosion and Sediment Controls**

Stabilization efforts must be initiated within 1 working day of cessation of construction activity and completed within 14 days. Areas must be stabilized if they will not be disturbed for at least 14 calendar days. Exceptions to this time frame include:

- (i) Where the initiation of stabilization measures is precluded by snow cover, stabilization measures must be initiated as soon as practicable.
- (ii) On areas where construction activities have temporarily ceased and will resume after 14 days, a temporary stabilization method can be used (temporary stabilization techniques must be described), and
- (iii) Stabilization is not required for exit points at linear utility construction site that are used only episodically and for very short durations over the life of the project, provided other exit point controls are implemented to minimize sediment track-out.

Additionally, a record must be kept with the SWPPP throughout construction of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated.

At a minimum, controls must be coordinated, installed and maintained to:

1. Minimize the amount of soil exposed during construction activity.
2. Minimize the disturbance of steep slopes.
3. Maintain natural buffers around surface waters, direct storm water to vegetated areas to increase sediment removal and maximize storm water infiltration, unless infeasible.
4. Minimize soil compaction and, unless infeasible, preserve topsoil.

Note: For practices below, consult relevant design criteria in Chapter 41 of the BDE Manual and maintenance criteria in Erosion and Sediment Control Field Guide for Construction.

**1. Erosion Control:**

The following are erosion control practices which may be used on a project (place a check by each practice that will be utilized on the project, add additional practices as needed):

- |   |   |
|---|---|
| <input type="checkbox"/> Mulch                              | <input checked="" type="checkbox"/> Preservation of existing vegetation                 |
| <input checked="" type="checkbox"/> Erosion Control Blanket | <input type="checkbox"/> Temporary Turf Cover Mixture (Class 7)                         |
| <input type="checkbox"/> Turf Reinforcement Mat             | <input checked="" type="checkbox"/> Permanent seeding (Class 1-6)                       |
| <input type="checkbox"/> Sodding                            | <input checked="" type="checkbox"/> Other (Specify) <u>Temp Erosion Control Seeding</u> |

Geotextile fabric

Other (Specify) Native Landscape Enhancement

Other (Specify) N/A

**2. Sediment Control:**

The following sediment control devices will be implemented on this project:

Ditch Checks

Perimeter Erosion Barrier

Inlet and Pipe protection

Rolled Excelsior

Hay or Straw bales

Silt Filter Fence

Above grade inlet filters (fitted)

Urethane foam/geotextiles

Above grade inlet filters (non-fitted)

Other (Specify) Native Landscape Enhancement

Inlet filters

Other (Specify) N/A

Other (Specify) N/A

**3. Structural Practices:**

Provide below is a description of structural practices that will be implemented:

Aggregate Ditch

Stabilized Construction Exits

Articulated Block Revetment Mat

Stabilized Trench Flow

Barrier (Permanent)

Sediment Basin

Concrete Revetment Mats

Retaining Walls

Dewatering Filtering

Riprap

Gabions

Storm Drain Inlet Protection

In-Stream or Wetland Work

Slope Walls

Level Spreaders

Sediment Trap

Paved Ditch

Other (Specify) N/A

Permanent Check Dams

Other (Specify) N/A

Precast Block Revetment Mat

Other (Specify) N/A

Rock Outlet Protection

Other (Specify) N/A

**4. Polymer Flocculants**

Design guidance for polymer flocculants is available in Chapter 41 of the BDE Manual. In addition, Polymer Flocculants may only be used by district Special Provision.

If polymer flocculants are used for this project, the following must be adhered to and described below:

- Identify the use of all polymer flocculants at the site.
- Dosage of treatment chemicals shall be identified along with any information from any Material Safety Data Sheet.
- Describe the location of all storage areas for chemicals.
- Include any information from the manufacturer's specifications.
- Treatment chemicals must be stored in areas where they will not be exposed to precipitation.
- The SWPPP must describe procedures for use of treatment chemicals and staff responsible for use/application of treatment chemicals must be trained on the established procedures.

N/A

**Part V. Other Conditions**

**1. Dewatering**

Will dewatering be required for this project?  Yes  No

If yes, the following applies:

- Dewatering discharges shall be routed through a sediment control (e.g., sediment trap or basin, pumped water filter bag) designed to minimize discharges with visual turbidity;
- The discharge shall not include visible floating solids or foam;
- The discharge must not cause the formation of a visible sheen on the water surface, or visible oily deposits on the bottom or shoreline of the receiving water. An oil-water separator or suitable filtration device shall be used to treat oil, grease, or other similar products if dewatering water is found to or expected to contain these materials;
- To the extent feasible, use well-vegetated (e.g., grassy or wooded), upland areas of the site to infiltrate dewatering water before discharge;
- You are prohibited from using receiving waters as part of the treatment area;
- To minimize dewatering-related erosion and related sediment discharges, use stable, erosion-resistant surfaces (e.g., well-vegetated grassy areas, clean filler stone, geotextile underlayment) to discharge from dewatering controls. Do not place dewatering controls, such as pumped water filter bags, on steep slopes (15% or greater in grade);
- Backwash water (water used to backwash/clean any filters used as part of storm water treatment) must be properly treated or hauled off-site for disposal;
- Dewatering treatment devices shall be properly maintained; and
- See Part XI (Inspections) for inspection requirement.

#### **Part VI. Permanent (i.e., Post-Construction) Storm Water Management Controls**

Provided below is a description of measures that may be installed during the construction process to control volume and therefore the amount pollutants in storm water runoff that can occur after construction operations have been completed.

Practices may include but are not limited to the following:

- Aggregate ditch checks;
- bioswales,
- detention pond(s),
- infiltration trench;
- retention pond(s),
- open vegetated swales and natural depressions,
- treatment train (sequential system which combine several practices).
- Velocity dissipation devices (See Structural Practices above)

Describe these practices below

Riprap will be installed in the existing ditch at the southeast corner of the IL-53 / Hoff Road intersection. This riprap will serve to stabilize the embankment and prevent further erosion, protecting downstream fauna and improving water quality.

Riprap will also be included at the inlet and outlet of the culvert. The culvert will be embedded which will improve the condition for nearby wildlife and reduce flow velocities, leading to more and healthier flora. Additionally, the plans call for weed clearing and Native Planting improvements which will lead to additional runoff filtering.

#### **Part VII. Additional Practices Incorporated From Local Ordinance(s)**

In some instances, an additional practice from a local ordinance may be included in the project. If so, describe below (Note: the Department is not subject to local ordinances)

Will County Stormwater Ordinance applies and should concur on permit issuance, but does not have any additional requirements beyond

that of the IDNR OWR.

### **Part VIII. Unexpected Regulated Substances/Chemical Spill Procedures**

When Unexpected Regulated Substances or chemical spills occur, Article 107.19 of the Standard Specifications for Road and Bridge Construction shall apply. In addition, it is the contractor's responsibility to notify the Engineer in the event of a chemical spill into a ditch or waterway, the Engineer will then notify appropriate IEPA and IEMA personnel for the appropriate cleanup procedures.

### **Part IX. Contractor Required Submittals**

Prior to conducting any professional services at the site covered by this plan, the Contractor and each subcontractor responsible for compliance with the permit shall submit to the Resident Engineer a Contractor Certification Statement, BDE 2342A.

1. The Contractor shall provide a construction schedule containing an adequate level of detail to show major activities with implementation of pollution prevention BMPs, including the following items:

- Approximate duration of the project, including each stage of the project
- Rainy season, dry season, and winter shutdown dates
- Temporary stabilization measures to be employed by contract phases
- Mobilization time-frame
- Mass clearing and grubbing/roadside clearing dates
- Deployment of Erosion Control Practices
- Deployment of Sediment Control Practices (including stabilized construction entrances and exits to be used and how they will be maintained)
- Deployment of Construction Site Management Practices (including concrete washout facilities, chemical storage, refueling locations, etc.)
- Paving, saw-cutting, and any other pavement related operations
- Major planned stockpiling operation
- Time frame for other significant long-term operations or activities that may plan non-storm water discharges as dewatering, grinding, etc.
- Permanent stabilization activities for each area of the project

2. During the pre-construction meeting, the Contractor and each subcontractor shall provide, as an attachment to their signed Contractor Certification Statement, a discussion of how they will comply with the requirements of the permit in regard to the following items and provide a graphical representation showing location and type of BMPs to be used when applicable:

- Temporary Ditch Checks - Identify what type and the source of Temporary Ditch Checks that will be installed as part of the project. The installation details will then be included with the SWPPP.
- Vehicle Entrances and Exits - Identify type and location of stabilized construction entrances and exits to be used and how they will be maintained.
- Material Delivery, Storage and Use- Discuss where and how materials including chemicals, concrete curing compounds, petroleum products, etc. will be stored for this project. Specifically, any chemical stored in a 55 gallon drum provided by the contractor.
- Stockpile Management - Identify the location of both on-site and off-site stockpiles. Discuss what BMPs will be used to prevent pollution of storm water from stockpiles.
- Waste Disposal - Discuss methods of waste disposal that will be used for this project.
- Spill Prevention and Control - Discuss steps that will be taken in the event of a material spill.
- Concrete Residuals and Washout Wastes - Discuss the location and type of concrete washout facilities to be used on this project and how they will be signed and maintained.
- Litter Management - Discuss how litter will be maintained for this project (education of employees, number of dumpsters, frequency of dumpster pick-up, etc.).

- Vehicle and Equipment Fueling - Identify equipment fueling locations for this project and what BMPs will be used to ensure containment and spill prevention.
- Vehicle and Equipment Cleaning and Maintenance - Identify where equipment cleaning and maintenance locations for this project and what BMPs will be used to ensure containment and spill prevention.
- Dewatering Activities - Identify the controls which will be used during dewatering operations to ensure sediments will not leave the construction site.

Additional measures indicated in the plan

In-stream workplan shall be required; contractor to submit

### **Part X. Maintenance**

It will be the Contractor's responsibility to attain maintenance guidelines for any manufactured BMPs which are to be installed and maintained per manufacture's specifications. However, when requested by the Contractor, the Resident Engineer will provide general maintenance guides (e.g., IDOT Erosion and Sediment Control Field Guide) to the Contractor for the practices associated with this project. Any damage or undermining shall be repaired immediately.

For Inlet Protection: Where there is evidence of sediment accumulation adjacent to the inlet protection measure, the deposited sediment must be removed by the following business day.

Below, describe procedures to maintain in good and effective operating conditions

To ensure adherence to Illinois Department of Transportation (IDOT) standards and environmental compliance during construction activities, erosion and sediment control (ESC) measures shall be implemented and maintained in accordance with the IDOT Erosion and Sediment Control Field Guide for Construction Inspection. This guide, accessible via the Construction tab on IDOT's website (<https://idot.illinois.gov/content/dam/soi/en/web/idot/documents/transportation-system/manuals-guides-and-handbooks/highways/environment/erosion-and-sediment-control-field-guide-for-construction-inspection.pdf>), outlines inspection protocols and maintenance procedures for ESC systems deployed on active construction sites. The scope shall include perimeter erosion barriers, storm drain inlet protection, riprap aprons, erosion control blankets, temporary mulching, permanent and temporary seeding, temporary ditch checks, and stabilized construction entrances.

Each ESC measure shall be evaluated for structural integrity, sediment accumulation, and operational functionality. Inspections must identify any signs of physical damage, displacement, or undermining that could compromise performance. Corrective actions shall be executed immediately upon identification of deficiencies. Specific maintenance procedures include removal and lawful disposal of accumulated sediment, replacement of displaced or washed-out stone at riprap aprons, and reinstallation or reinforcement of erosion control blankets and ditch checks. All repairs must restore the original design intent and ensure continued effectiveness of the ESC system. Materials used for repairs shall conform to IDOT specifications and be installed per manufacturer recommendations and field guide standards.

Routine inspections shall be conducted at a minimum frequency of once every seven calendar days and within 24 hours following any precipitation event exceeding 0.5 inches. All inspection activities shall be documented using IDOT Form BC 2259, and updates to the Storm Water Pollution Prevention Plan (SWPPP) must be completed within seven days of inspection. In cases where deficiencies are not corrected within the required timeframe, an Incidence of Non-Compliance (ION) shall be filed with the Illinois Environmental Protection Agency (IEPA). These procedures are critical to maintaining regulatory compliance under the ILR10 permit and ensuring that construction activities do not adversely impact adjacent water resources or violate state and federal environmental standards.

### **Part XI. Inspections**

Qualified personnel shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm or by the end of the following business or workday that is 0.50 inches or greater or equivalent snowmelt (except as allowed for Frozen Conditions).

In addition, all areas where storm water typically flows within the site should be inspected periodically to check for evidence of pollutants entering the drainage system, as well as all locations where stabilization measures have been implemented to ensure they are operating correctly.

Inspections shall be documented on the form BC 2259 (Storm Water Pollution Prevention Plan Erosion Control Inspection Report).

The Erosion and Sediment Control Field Guide for Construction Inspection shall be consulted as needed.

#### Dewatering

For site(s) discharging dewatering water, an inspection during the discharge shall be done once per day on which the discharge occurs and record the following in a report within 24 hours of completing the Inspection:

- The inspection date;
- Names and titles of personnel performing the inspection;
- Approximate times that the dewatering discharge began and ended on the day of inspection;
- Estimates of the rate (in gallons per day) of discharge on the day of inspection;
- Whether or not any of the following indications of pollutant discharge were observed at the point of discharge: a sediment plume, suspended solids, unusual color, presence of odor, decreased clarity, or presence of foam; and/or a visible sheen on the water surface or visible oily deposits on the bottom or shoreline of the receiving water.

#### Frozen Conditions

Inspections may be reduced to once per month when all construction activities have ceased due to frozen conditions. Weekly inspections will recommence when construction activities resume, either temporarily or continuously, or if there is 0.5" or greater rain event, or a discharge due to snowmelt occurs.

#### Flooding or unsafe conditions

Areas that are inaccessible during required inspections due to flooding or other unsafe conditions must be inspected within 72 hours of becoming accessible.

### **Part XII. Incidence of Noncompliance (ION)**

The Department shall notify the appropriate Agency Field Operations Section office by email as described on the IEPA ION form, within 24 hours of any incidence of noncompliance for any violation of the storm water pollution prevention plan observed during any inspection conducted, or for violations of any condition of this permit.

The Department shall complete and submit within 5 days an "Incidence of Noncompliance" (ION) report for any violation of the storm water pollution prevention plan observed during any inspection conducted, or for violations of any condition of this permit. Submission shall be on forms provided by the IEPA and include specific information on the cause of noncompliance, actions which were taken to prevent any further causes of noncompliance, and a statement detailing any environmental impact which may have resulted from the noncompliance. Corrective actions must be undertaken immediately to address the identified non-compliance issue(s).

Illinois EPA  
2520 W. Iles Ave./P.O. Box 19276  
Springfield, IL 62794-9276

Please note that if these are delivered via FedEx or UPS, these carriers cannot deliver to our P.O. Box and this number must be excluded from the mailing address.

### **Part XIII. Corrective Actions**

Corrective actions must be taken when:

- A storm water control needs repair or replacement;
- A storm water control necessary to comply with the requirements of this permit was never installed, or was installed incorrectly;
- Discharges are causing an exceedance of applicable water quality standards; or
- A prohibited discharge has occurred.

Corrective Actions must be completed as soon as possible and documented within 7 days in an Inspection Report or report of noncompliance. If it is infeasible to complete the installation or repair within 7 calendar days, it must be documented in the records why it is infeasible to complete the installation or repair within the 7 day time-frame and document the schedule for installing the storm water control(s) and making it operational as soon as feasible after the 7-day time-frame. In the event that maintenance is required for the same storm water control at the same location three or more times, the control must be repaired in a manner that prevents continued failure to the extent feasible, and it must be documented the condition and how it was repaired in the records. Alternatively, it must be documented why the specific re-occurrence of this same issue must continue to be addressed as a routine maintenance fix.

### **Part XIV. Retention of Records**

The Department must retain copies of the SWPPP and all reports and notices required by this permit, records of all data used to complete the NOI to be covered by this permit, and the Agency Notice of Permit Coverage letter for at least three years from the date that the permit coverage expires or is terminated. The permittee must retain a copy of the SWPPP and any revisions to the SWPPP required by this permit at the construction site from the date of project initiation to the date of final stabilization. Any manuals or other documents referenced in the SWPPP must also be retained at the construction site.

### **Part XV. Failure to Comply**

Failure to comply with any provisions of this Storm Water Pollution Prevention Plan will result in the implementation of a National Pollutant Discharge Elimination System/Erosion and Sediment Control Deficiency Deduction against the Contractor and/or penalties under the Permit ILR10 which could be passed on to the contractor (See Article 105.03 Conformity with Contract)

### **Part XVI. Keeping the SWPPP ("plan") Current**

IDOT shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to Waters of the United States and which has not otherwise been addressed in the plan or if the plan proves to be ineffective in eliminating or significantly minimizing sediment and/or pollutants identified under paragraph Part II. Water Quality or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction site activity.

In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the plan. Amendments to the plan may be reviewed by the IEPA the same manner as the SWPPP and Erosion and Sediment Control Plan (ESCP) submitted as part of the Notice of Intent (NOI). The SWPPP and site map must be modified within 7 days for any changes to construction plans, storm water controls or other activities at the site that are no longer accurately reflected in the SWPPP.

In addition, the NOI shall be modified using the CDX system for any substantial modifications to the project such as:

- address changes
- new contractors
- area coverage
- additional discharges to Waters of the United States, or
- other substantial modifications (e.g. addition of dewatering activities).

The notice of intent shall be modified within 30 days of the modification to the project.

**Part XVII: Notifications**

In addition to the NOI submitted to IEPA, all MS4 permittees identified in Part I. Site Description shall receive a copy of the NOI.

**Part XVIII. Notice of Termination**

Where a site has completed final stabilization and all storm water discharges from construction activities that are authorized by this permit are eliminated, the permittee must submit a completed Notice of Termination (NOT) that is signed in accordance with ILR10 permit.

Method of Measurement: NPDES Compliance shall not be measured for payment separately. Measurement for payment for Temporary Erosion and Sediment Control shall be in accordance with Section 280 or as otherwise provided in the contract. Permanent BMPs necessary to comply with this provision shall be measured for payment in accordance with their respective provisions in the contract.

Basis of Payment: NPDES Compliance shall not be paid for separately. Payment for Temporary Erosion and Sediment Control shall be in accordance with Section 280 or as otherwise provided in the contract. Permanent BMPs necessary to comply with this provision shall be paid for in accordance with their respective payment provisions in the contract.

**404 PERMIT**



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, CHICAGO DISTRICT  
231 SOUTH LA SALLE STREET, SUITE 1500  
CHICAGO IL 60604-1437

February 13, 2026

Regulatory Branch (LRC-2025-00439)

SUBJECT: Nationwide Permit Authorization for the IDOT IL 53 at Grant Creek Roadway Improvement Project for 0.12 ac of Permanent Impacts for the Culvert Replacement and Streambank Stabilization, Will County, Illinois (Latitude 41.392807°N, Longitude - 88.116457°W)

IDOT Contract: 62P01

Vanessa Ruiz  
Illinois Department of Transportation  
201 West Center Court  
Schaumburg, Illinois 60196

Dear Mr. Ruiz:

The U.S. Army Corps of Engineers, Chicago District, has completed its review of your pre-construction notification for the above referenced project, dated November 20, 2025, for authorization under the Nationwide Permit (NWP) Number 13 (NWP 13 Bank Stabilization) and NWP 14 (Transportation Projects), prepared on your behalf by GSG Consultants, Inc.

This determination covers only your project as described above and in the enclosed approved project plans titled, "Proposed Highway Plans FAP Route 846 (IL53) At Grant Creek Section 2021-064-CR", dated November 5, 2025, prepared by Ardmore Roderick. Caution must be taken to prevent construction materials and activities from impacting waters of the United States beyond the scope of this authorization. If the design, location, or purpose of the project is changed, it is recommended that you contact this office to determine the need for further authorization.

The subject activity may be performed without further authorization from this office provided that the activity complies with the NWP terms and general conditions, the regional conditions for Illinois, the special conditions listed below, and the Section 401 Water Quality Certification ("WQC") conditions added by the Illinois Environmental Protection Agency ("IEPA"). The NWP Program terms, general conditions, and regional conditions are listed in the enclosed NWP Summary. The WQC conditions are listed in the enclosed Fact Sheet.

Specifically, we wish to draw your attention to General Condition 21, which requires permittees to notify our office immediately in the event of discovery of previously unknown human remains, Native American cultural items, or archaeological artifacts; and a term of the NWP program, which states that NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

Added 2/18/26

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In addition to the general, regional, and water quality conditions of this permit verification, the following special conditions also apply to this verification:

1. You shall provide written notification to this office at least ten (10) days prior to the commencement of work indicating the start date and estimated end date of construction. If possible, this notification should be provided by email to [patrick.j.verhalen@usace.army.mil](mailto:patrick.j.verhalen@usace.army.mil).
2. A copy of this authorization must be present at the project site during all phases of construction.
3. To avoid potential impacts to the northern long-eared bat (*Myotis septentrionalis*), tree clearing (trees 3" DBH or greater) shall only occur between October 1 and March 31 of any construction year.
4. Prior to commencement of work, you shall submit in-stream work plans and a narrative of the contractor's preferred method of cofferdam. Work in the waterway shall not commence until this office notifies you, in writing, that the plans have been approved.
5. This authorization is contingent upon implementing and maintaining soil erosion and sediment controls in a serviceable condition throughout the duration of the project. You shall comply with the project's soil erosion and sediment control (SESC) plans and the installation and maintenance requirements of the SESC practices on-site. You shall notify this office any changes or modifications to the approved plan set. Please be aware that field conditions during project construction may require the implementation of additional SESC measures for further protection of aquatic resources. If you fail to implement corrective measures, this office may require more frequent site inspections to ensure the installed SESC measures are acceptable. Please be aware that work authorized herein may not commence until you receive written notification from this office that your plans meet technical standards.

As part of the SESC process, you are required to retain a qualified Independent SESC Inspector (ISI) to review the project's SESC plans and provide a detailed narrative that explains the measures to be implemented at the project site. The ISI is also required to perform site inspections of the implemented SESC measures to ensure proper installation and regular maintenance of the approved methods.

- a. You shall contact this office and the ISI at least 10 calendar days prior to the preconstruction meeting so that a representative of this office may attend. The meeting agenda will include a discussion of the SESC plan and the installation and maintenance requirements of the SESC practices on the site;

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- b. Prior to commencement of any in-stream work, you shall submit construction plans and a detailed narrative to this office that disclose the contractor's preferred method of cofferdam and dewatering method;
  - c. The ISI will perform weekly inspections of the implemented SESC measures to ensure proper installation and regular maintenance of the approved methods. The ISI contact information form shall be submitted to this office via e-mail and/or hard copy prior to commencement of the permitted work; and
  - d. The ISI shall submit to the Corps an inspection report with digital photographs of the SESC measures on a weekly basis during the active and non-active phases of construction. An inspection report shall also be submitted at the completion of the project once the SESC measures have been removed and final stabilization has been completed.
6. Work in the waterway should be timed to take place during low or no-flow conditions. Low flow conditions are flow at or below the normal water elevation.
  7. The plan must be designed to allow for the conveyance of the 2-year peak flow past the work area without overtopping the cofferdam. The Corps has the discretion to reduce this requirement if documented by the applicant to be infeasible or unnecessary.
  8. Water shall be isolated from the in-stream work area using a cofferdam constructed of non-erodible materials (steel sheets, aqua barriers, rip rap and geotextile liner, etc.). Earthen cofferdams are not permissible.
  9. The cofferdam must be constructed from the upland area and no equipment may enter flowing water at any time. If the installation of the cofferdam cannot be completed from shore and access is needed to reach the area to be coffered, other measures, such as the construction of a causeway, will be necessary to ensure that equipment does not enter the water. Once the cofferdam is in place and the isolated area is dewatered, equipment may enter the coffered area to perform the required work.
  10. If bypass pumping is necessary, the intake hose shall be placed on a stable surface or floated to prevent sediment from entering the hose. The bypass discharge shall be placed on a non-erodible, energy dissipating surface prior to rejoining the stream flow and shall not cause erosion. Filtering of bypass water is not necessary unless the bypass water has become sediment-laden as a result of the current construction activities.
  11. During dewatering of the coffered work area, all sediment-laden water must be filtered to remove sediment. Possible options for sediment removal include baffle systems, anionic polymers systems, dewatering bags, or other appropriate methods. Water shall have sediment removed prior to being re-introduced to the downstream waterway. A stabilized conveyance from the dewatering device to the waterway must be

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identified in the plan. Discharge water is considered clean if it does not result in a visually identifiable degradation of water clarity.

12. The portion of the side slope that is above the observed water elevation shall be stabilized as specified in the plans prior to accepting flows. The substrate and toe of slope that has been disturbed due to construction activities shall be restored to proposed or pre-construction conditions and fully stabilized prior to accepting flows.

13. Upon completion of "For Construction" Plans, please provide a copy to this office to ensure that the proposed impacts have not changed from the documents reviewed for this authorization.

14. Upon completion of the work and prior to the submission of the compliance certificate, a copy of the As-Built Plans shall be submitted to the USACE PM at [patrick.j.verhalen@usace.army.mil](mailto:patrick.j.verhalen@usace.army.mil) illustrating the final conditions of the impacted areas. 401 certification, please contact IEPA's Division of Water Pollution Control, Permit Section #15, by telephone at (217) 785-6939.

Please note that IEPA has issued Section 401 Water Quality Certification for this NWP. The conditions of this WQC are automatically conditions of this NWP verification and are included in the enclosed Fact Sheet. If you have any questions regarding Section 401 certification, please contact IEPA's Division of Water Pollution Control, Permit Section #15, by telephone at (217) 785-6939.

This verification is valid until March 14, 2026, when NWP 13 and 14 are scheduled to be modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date the NWP is modified, reissued, or revoked, you will have 12 months from the date of the modification, reissuance or revocation to complete the activity under the present terms and conditions. Failure to comply with the general and regional conditions of this NWP, or any project-specific special conditions of this authorization, may result in the suspension or revocation of your authorization.

Once you have completed the authorized activity, please sign and return the enclosed compliance certification as required by General Condition 30. If you have any questions, please contact Patrick VerHalen of this office by telephone at (312) 846-5545, or email at [patrick.j.verhalen@usace.army.mil](mailto:patrick.j.verhalen@usace.army.mil).

Sincerely,

Soren G. Hall Digitally signed by Soren G. Hall  
Date: 2026.02.13 14:15:49  
+0600

Soren G. Hall  
Team Leader  
Regulatory Branch

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Enclosures

cc: Illinois Department of Transportation (Vanessa Ruiz, Alycia Klueenberg)

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**PERMIT COMPLIANCE  
CERTIFICATION**

Permit Number: LRC-2025-00439  
Permittee: Jose Rios  
Illinois Department of Transportation  
Date: February 13, 2026

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of said permit and if applicable, compensatory wetland mitigation was completed in accordance with the approved mitigation plan.<sup>1</sup>

\_\_\_\_\_  
PERMITTEE

\_\_\_\_\_  
DATE

Within 30 days after completion of the activity authorized by this permit and any mitigation required by the permit, this certification must be signed and returned to the following address:

Email to: [ChicagoRequests@usace.army.mil](mailto:ChicagoRequests@usace.army.mil)  
Subject: Compliance Certification, LRC-2025-00439

Please note that your permitted activity is subject to compliance inspections by Corps of Engineers representatives. If you fail to comply with this permit, you may be subject to permit suspension, modification, or revocation.

<sup>1</sup> If compensatory mitigation was required as part of your authorization, you are certifying that the mitigation area has been graded and planted in accordance with the approved plan. You are acknowledging that the maintenance and monitoring period will begin after a site inspection by a Corps of Engineers representative or after thirty days of the Corps' receipt of this certification. You agree to comply with all permit terms and conditions, including additional reporting requirements, for the duration of the maintenance and monitoring period.

## NATIONWIDE PERMIT SUMMARY



U.S. Army Corps of  
Engineers  
Chicago District

### Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – February 25, 2022  
Illinois

#### 13. Bank Stabilization

Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high-water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, 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 must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404.)

**Note:** In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

#### A. Regional Conditions

1. For NWP 12, NWP 57, and NWP 58, pre-construction notification is required in accordance with General Condition 32 for the following activities:

(a) activities that involve mechanized land clearing in a forested wetland for the utility line right-of-way;

(b) utility lines placed within, and parallel to or along a jurisdictional stream bed.

2. For Nationwide Permit 14, all proposed projects that result in the loss of greater than 300 linear feet of streambed located within Waters of the U.S., requires a Pre-Construction Notice in accordance with General Condition No. 32.

3. Any bank stabilization activity involving a method that protrudes from the bank contours, such as jetties, stream barbs, and/or weirs, will require a pre-construction notification in accordance with General Condition 32.

**BUILDING STRONG®**  
**U.S. ARMY CORPS OF ENGINEERS – CHICAGO DISTRICT**  
231 S. LaSalle St., Suite 1500 – CHICAGO, IL 60604  
(312) 846-5530

[lrc.usace.army.mil/Missions/Regulatory.aspx](http://lrc.usace.army.mil/Missions/Regulatory.aspx)

**B. Nationwide Permit General Conditions**

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. **Navigation.**

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. **Removal of Temporary Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17,

which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

- (e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.
- (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.
19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
20. **Historic Properties.**
- (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
- (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

- (d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
- (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
21. **Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
22. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may

also designate additional critical resource waters after notice and opportunity for public comment.

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57, and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.
23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, 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, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, 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.
- (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, 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, and provides an activity-specific waiver of this requirement.
- This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification,

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)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient.

Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

- (f) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. Water Quality.**
- (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.
- (b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
- (c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see [33 CFR 330.4\(e\)](#)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
- 28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:
- (a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- (b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.
- 29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:
- “When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”
- \_\_\_\_\_
- (Transferee)
- \_\_\_\_\_
- (Date)
- 30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation.

The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(i)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32.

An activity that requires section 408 permission and/or review is not authorized by NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**32. Pre-Construction Notification.**

- (a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Pre-Construction Notification.** The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification.

The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures

- (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.
- (iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, perennial, and intermittent, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate.
- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat

proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.

- (8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act.

- (9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

- (10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

- (c) **Form of Pre-Construction Notification.** The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals

- (d) **Agency Coordination:**

- (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

- (2) Agency coordination is required for:
  - i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;
  - ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
  - (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
- (3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
- (4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

- (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### C. District Engineer's Decision

- 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by NWP.

If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

- 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
- 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters.

The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at [33 CFR 332.3\(k\)](#). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

□ 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

#### D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

#### E. Definitions

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material into waters of the United States.

**Ecological reference:** A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has surface water flowing continuously year-round during a typical year.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project

must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. Channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

**Tribal lands:** Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Tribal rights:** Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see [33 CFR 328.4\(c\)\(2\)](#)).



U.S. Army Corps of  
Engineers  
Chicago District

## Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – February 25, 2022  
Illinois

### 14. Linear Transportation Projects

Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. 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. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if:

1. The loss of waters of the United States exceeds 1/10-acre; or
2. there is a discharge in a special aquatic site, including wetlands. (See general condition 32.)  
(Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

#### A. Regional Conditions

- 1. For NWP 12, NWP 57, and NWP 58, pre-construction notification is required in accordance with General Condition 32 for the following activities:
  - (a) activities that involve mechanized land clearing in a forested wetland for the utility line right-of-way;
  - (b) utility lines placed within, and parallel to or along a jurisdictional stream bed.
- 2. For Nationwide Permit 14, all proposed projects that result in the loss of greater than 300 linear feet of streambed located within Waters of the U.S., requires a Pre-Construction Notice in accordance with General Condition No. 32.
- 3. Any bank stabilization activity involving a method that protrudes from the bank contours, such as jetties, stream bars, and/or weirs, will require a pre-construction notification in accordance with General Condition 32.

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**B. Nationwide Permit General Conditions**

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. **Navigation.**

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. **Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. **Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. **Removal of Temporary Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. **Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. **Wild and Scenic Rivers.**

(a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. **Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. **Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably

certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

- (e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.
- (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.
19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
20. **Historic Properties.**
- (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
- (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

- (d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
- (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
21. **Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
22. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may

also designate additional critical resource waters after notice and opportunity for public comment.

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57, and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.
23. **Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:
- (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, 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, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, 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.
- (d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, 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, and provides an activity-specific waiver of this requirement.

This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, 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\(e\)\(3\)](#)).

(c) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient.

Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see [33 CFR 332.3\(b\)\(2\)](#) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see [33 CFR 330.1\(e\)\(3\)](#)). (See also [33 CFR 332.3\(f\)](#).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of [33 CFR 332.4\(e\)\(2\)](#) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see [33 CFR 332.3\(k\)\(3\)](#)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see [33 CFR 332.4\(c\)\(1\)\(ii\)](#)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at [33 CFR 332.3\(b\)](#).

- For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. Water Quality.**
- (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see [33 CFR 330.4\(c\)](#)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.
- (b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
- (c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see [33 CFR 330.4\(d\)](#)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see [33 CFR 330.4\(e\)](#)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
- 28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:
- (a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- (b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(j)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32.

An activity that requires section 408 permission and/or review is not authorized by NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**32. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer, or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) **Contents of Pre-Construction Notification.**

The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
- (ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.
- (iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans).

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, perennial, and intermittent, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

- (9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16), and
- (10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
- (c) **Form of Pre-Construction Notification.** The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- (d) **Agency Coordination:**
  - (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
  - (2) Agency coordination is required for:
    - i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;
    - ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
    - iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
  - (3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile

transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

- (4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### C. District Engineer's Decision

- 1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by NWP.

If an applicant requests a waiver of an applicable limit, as provided for in NWP 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

□ 2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

□ 3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at [33 CFR 332.3\(k\)](#). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity

results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

□ 4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

**D. Further Information**

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

**E. Definitions**

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material into waters of the United States.

**Ecological reference:** A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWP's, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has surface water flowing continuously year-round during a typical year.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

**Tribal lands:** Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Tribal rights:** Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWPs, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see [33 CFR 328.4\(c\)\(2\)](#)).

IEPA PERMIT



**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

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JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

Corrected Copy

**October 8, 2021**

Corrected Copy Date: **DEC 21 2021**

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 August 19, 2021 your office extended the reasonable period of time to revise the §401 water quality certification to October 13, 2021 for thirty-two (32) NWP. The Agency has made modifications to the certification conditions issued on December 11, 2020. By this final determination document the Illinois EPA grants §401 water quality certification for NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 53, and 54 with the special and/or general conditions specified below. This document also provides the certification conditions for NWP 12, 29, 39, 40, 42, 43, 51, 52, 57, and 58 and notice of the Agency determination to deny eight (8) 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

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PLEASE PRINT ON RECYCLED PAPER

Added 2/18/26

EPA Log No. C-0210-20, 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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**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 57 – Electric Utility Line and Telecommunications Activities. Refer to Special Conditions for NWP 12 in Attachment.
- NWP 58 – 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).

IEPA Log No. C-0210-20, 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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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 46 – Discharges into Ditches: The Illinois EPA has determined that a case-specific review is warranted for all discharge activities into ditches because of the nationwide permit exceeds the 1/2 acreage determined to be 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 46.

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 59 – 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 59.

#### 401 Certification General Conditions

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

IEPA Log No. C-0210-20, 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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“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 Sections 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 Sections 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

IEPA Log No. C-0210-20, 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.

Page No. 5

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**

Pursuant to Illinois Environmental Protection Act Section 39(a)[415 ILCS 5/39(a)] and 35 Ill. Admin. Code Section 395.402(b)(2), 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"

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<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

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,

**ORIGINAL SIGNED**

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 dated 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

Added 2/18/26

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

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:
  - 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 ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

Corrected Copy

**October 8, 2021**

Corrected Copy Date: **DEC 21 2021**

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 August 19, 2021 your office extended the reasonable period of time to revise the §401 water quality certification to October 13, 2021 for thirty-two (32) NWP. The Agency has made modifications to the certification conditions issued on December 11, 2020. By this final determination document the Illinois EPA grants §401 water quality certification for NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 36, 37, 38, 41, 45, 53, and 54 with the special and/or general conditions specified below. This document also provides the certification conditions for NWP 12, 29, 39, 40, 42, 43, 51, 52, 57, and 58 and notice of the Agency determination to deny eight (8) 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

2125 S. First Street, Champaign, IL 61820 (217) 278-5800  
2009 Mall Street Collinsville, IL 62234 (618) 346-5120  
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000  
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200  
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022  
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

PLEASE PRINT ON RECYCLED PAPER

Added 2/18/26

EPA Log No. C-0210-20, 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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**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 57 – Electric Utility Line and Telecommunications Activities. Refer to Special Conditions for NWP 12 in Attachment.
- NWP 58 – 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).

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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 46 – Discharges into Ditches: The Illinois EPA has determined that a case-specific review is warranted for all discharge activities into ditches because of the nationwide permit exceeds the 1/2 acreage determined to be 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 46.

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 59 – 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 59.

#### 401 Certification General Conditions

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

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“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 Sections 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.

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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;
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Added 2/18/26

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

Sincerely,

**ORIGINAL SIGNED**

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

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CoE, Louisville District (Indianapolis Office)  
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CoE, Memphis District  
CoE, St. Louis District  
IDNR, Bartlett  
IDNR, OWR, Chicago  
IDNR, OWR, Springfield  
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**ILLINOIS EPA WATER QUALITY CERTIFICATION  
SPECIAL CONDITIONS FOR NATIONWIDE PERMIT 14  
Linear Transportation Projects**

1. Pursuant to 35 Ill. Admin. Code Sections 395.401(a), 302.105(a), and 302.105(c)(2)(B), a 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 Sections 395.401(a), 302.105(a), and 302.105(c)(2)(B), a 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 Sections 395.401(a), 302.105(a), and 302.105(c)(2)(B), a 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/tmds/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.

**IDNR PERMIT**



Illinois  
Department of  
**Natural  
Resources**

JB Pritzker, Governor • Natalie Phelps Finnie, Director  
One Natural Resources Way • Springfield, Illinois 62702-1271

[www.dnr.illinois.gov](http://www.dnr.illinois.gov)

Office of Water Resources • 2050 West Stearns Road • Bartlett, Illinois 60103

November 21, 2025

SUBJECT: Permit No. NE2025071  
IL Route 53 – Culvert Replacement  
Grant Creek  
Will County, Application No. N20250159

Jose Rios  
Region 1 Engineer  
Illinois Department of Transportation  
201 West Center Court  
Schaumburg, Illinois 60196-1096

Attention: Fawad Aqueel

Dear Mr. Rios

Enclosed is the Illinois Department of Natural Resources, Office of Water Resources Permit No. NE2025071 authorizing the subject project. This project has been reviewed for compliance with the Department's Part 3710 Rules and does not supersede any other federal, state, or local authorizations that may be required for the project. Upon receipt and review of this permit and all conditions included therein, please properly execute and return the attached acceptance slip within sixty (60) days from the date of this permit.

Please be advised that the Illinois Department of Natural Resources, Division of Ecosystems and Environment (DEE) participates in the regulatory programs of the U.S. Army, Corps of Engineers (USACE) and may review this project if a USACE Section 10 or 404 permit is required. Issuance of a permit by the Office of Water Resources does not preclude DEE's provision of comments and/or recommendations, primarily related to biological effects of the proposed action, to the USACE and other federal agencies concerning your project.

If any changes of the permitted work are found necessary, revised plans should be submitted promptly to this office for review and approval. Also, this permit expires on the date indicated in Condition (13). If you are unable to complete the work by that date, you must make a written for an extension of time to the permit. Please contact Kevin Hoobler at 847/608-3116 if you have questions.

Sincerely,

William T. Boyd, P.E.  
Chief, Northeastern Illinois Regulatory Programs Section

WTB: KH: EW  
Enclosure

cc: Chicago District, U.S. Army Corps of Engineers (email)  
Village of Elwood Engineering Department

Added 2/18/26



PERMIT NO. NE2025071  
DATE: November 21, 2025

**State of Illinois**  
**Department of Natural Resources, Office of Water Resources**

Permission is hereby granted to:

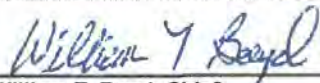
Illinois Department of Transportation  
201 West Center Court  
Schaumburg, Illinois 60196

to replace the IL Route 53 with twin 12x9x151 foot long box culverts (north cell one foot embedded, south cell one foot embedded with 2 foot weir) in the floodway of Grant Creek in the Southeast Quarter of Section 31, Township 34 North, Range 10 East of the Third Principal Meridian in Will County,

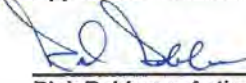
in accordance with an application dated August 29, 2025, and the plans and specifications entitled:

STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, PROPOSED, HIGHWAY PLANS, FAP ROUTE 846 (IL 53) AT GRANT CREEK, SECTION 2021-064-CR, PROJECT NO. NHPP-GCQJ (861), CULVERT REPLACEMENT, WILL COUNTY, TITLE SHEET, UNDATED, SHEETS 20, 21, 74, 78 AND 95 OF 165, DATED APRIL 11, 2025, ALL RECEIVED SEPTEMBER 2, 2025.

Examined and Recommended:

  
William T. Boyd, Chief  
Northeastern IL Regulatory  
Programs Section

Approval Recommended:

  
Rick Pohlman, Acting Director  
Office of Water Resources

Approved:

  
Natalie Phelps Finnie, Director  
Department of Natural Resources

This PERMIT is subject to the terms and special conditions contained herein.

**PERMIT NO. NE2025071**

**THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) This permit is granted in accordance with the Rivers, Lakes, and Streams Act "615 ILCS 5."
- 2) This permit does not convey title to the permittee or recognize title of the permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the activity or any part thereof will be located, or otherwise grant to the permittee any right or interest in or to the property, whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.
- 3) This permit does not release the permittee from liability for damage to persons or property resulting from the work covered by this permit; and does not authorize any injury to private property or invasion of private rights.
- 4) This permit does not relieve the permittee of the responsibility to obtain other federal, state, or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approvals from any federal or state agency to do the work, this permit is not effective until the federal and state approvals are obtained. If construction does not begin within two years of the date of this permit, the permittee must submit the project to EcoCat (<http://dnr.illinois.gov/EcoPublic/>) for an updated consultation under the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act.
- 5) The permittee shall, at the permittee's own expense, remove all temporary piling, cofferdams, false work, and material incidental to the construction of the project. If the permittee fails to remove such structures or materials, the Department may have removal made at the expense of the permittee.
- 6) In public waters, if future need for public navigation or other public interest by the state or federal government necessitates changes in any part of the structure or structures, such changes shall be made by and at the expense of the permittee or the permittee's successors as required by the Department or other properly constituted agency, within sixty (60) days from receipt of written notice of the necessity from the Department or other agency, unless a longer period of time is specifically authorized.
- 7) The execution and details of the work authorized shall be subject to the review and approval of the Department. Department personnel shall have the right of access to accomplish this purpose.
- 8) Starting work on the activity authorized will be considered full acceptance by the permittee of the terms and conditions of the permit.
- 9) The Department in issuing this permit has relied upon the statements and representations made by the permittee; if any substantive statement or representation made by the permittee is found to be false, this permit will be revoked; and when revoked, all rights of the permittee under the permit are voided.
- 10) In public waters, the permittee and the permittee's successors shall make no claim whatsoever to any interest in any accretions caused by the activity.
- 11) In issuing this permit, the Department does not ensure the adequacy of the design or structural strength of the structure or improvement.
- 12) Noncompliance with the conditions of this permit will be considered grounds for revocation.
- 13) If the construction activity permitted is not completed on or before December 31, 2028, this permit shall cease and be null and void.

**THIS PERMIT IS SUBJECT TO THE FOLLOWING SPECIAL CONDITION:**

- a) The permit will be suspended, and no further construction or development may continue if the start of construction, as defined in 17 IAC Ch. I, Sec. 3710, for work authorized by this permit is not commenced within 180 days after the date of this permit or if the work authorized is suspended or abandoned for a period of 180 days after work commences.

**PERMIT NO. NE2025071**  
Illinois Department of Transportation  
IL Route 53 – Grant Creek

**PERMIT ACCEPTANCE**

This Acceptance must be signed and returned to the address below to validate this permit. See Condition No. 8.

**ILLINOIS DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF WATER RESOURCES  
2050 WEST STEARNS ROAD  
BARTLETT, ILLINOIS 60103**

The undersigned permittee, personally, or if a corporation by its duly authorized officers, hereby accepts the permit bearing the above permit number subject to all conditions named therein, on this 15<sup>th</sup> day of December, 2025

By Juan Aguel

By \_\_\_\_\_

If a corporation  
affix seal here.