

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
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February 15, 2018

Chad Konickson
U.S. Army Corps of Engineers
St. Paul District - Regulatory
180 5th St. East
Suite 700
St. Paul MN 55101

Subject: Water Quality Certification for the Regional General Permits in WI

Dear Mr. Konickson:

The Wisconsin Department of Natural Resources submits the attached water quality certification for U.S. Army Corps of Engineers' Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor Discharges, Piers and Docks, Wildlife Ponds, Transportation, and Utilities for projects in Wisconsin.

Please feel free to contact Cami Peterson or me with any questions.

Sincerely,



Benjamin Callan
Chief, Integration Services Section

cc: Wendy Melgin, USEPA
Jill Bathke, USACE
Rebecca Graser, USACE

Attachment

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army,
Corps of Engineers, for Water Quality Certification for the
Final Regulations Pertaining to the Issuance
of Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor
Discharges, Piers and Docks, Transportation, Utilities, Wildlife Ponds)

On December 20, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of seven Regional General Permits (RGPs) in the Federal Register. The publication includes new RGPs. Publication of these RGPs serves as the Corps' application to the State for water quality certification (WQC) under Section 401 of the Federal Clean Water Act (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the final regulations pursuant to Section 401, CWA, and Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the RGPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. The certification contained herein shall expire on February 16, 2023.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Wisconsin Environmental Policy Act (WEPA) or the National Environmental Policy Act (NEPA).

Note: The specific language in the RGPs is not included in this document. Copies of complete regional general permits published in the Federal Register on December 20, 2017, may be obtained from your local COE field office.

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

GENERAL CONDITIONS:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.

2. If any of these §401 water quality certification conditions are found invalid or unenforceable, the water quality certification is denied for all activities to which that condition applies.

3. No discharges of dredged or fill material below the ordinary high water mark of a navigable stream as defined by s. 310.03(5), Wis. Adm. Code, may take place during fish spawning periods or times when nursery areas would be adversely impacted. These periods are:

- September 15th through May 15th for all trout streams and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
- March 1st through June 15th for ALL OTHER waters.

4. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these RGPs shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Regional General Permits Granted Water Quality Certification:

- Beach Raking
- Minor Discharges
- Piers and Docks

Regional General Permits for which Water Quality Certification is Partially Denied

The specified activities authorized by the following RGP categories are denied WQC without prejudice and must apply to the WDNR for an individual 401 WQC. Activities that do not include the activities for which certification has been denied are certified subject to all applicable RGP general conditions.

- Utilities
 - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
 - WQC certified: All other RGP activities.
- Transportation
 - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
 - WQC certified: All other RGP activities.
- Beach Creation & Nourishment
 - WQC denied: Placement of sand for beach creation.
 - WQC certified: All other RGP activities.
- Wildlife Ponds
 - WQC denied: The project is located in a navigable water with stream history. (The Wisconsin Department of Natural Resources (WDNR) is responsible for interpretation of a navigable water with stream history. The point of contact for

questions relating to a navigable water with stream history is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html>)

- WQC denied: If the project is located in existing wetland not in agricultural crops, not dominated by invasive species, or dominated by other than early successional hydrophyte species. (The WDNR is responsible for interpretation of these categories that are denied WQC. The point of contact for questions is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html>)
- WQC certified: All other RGP activities.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Madison, Wisconsin February 15, 2018

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Ed Elrke
for Daniel Meyer, Secretary