



US Army Corps
of Engineers®
St. Paul District

PUBLIC NOTICE

Date: June 19, 2017

FINAL AND CORRECTED REGIONAL CONDITIONS FOR 2017 NATIONWIDE PERMITS IN THE STATES OF MINNESOTA AND WISCONSIN (EXCLUDING RESERVATIONS)

Summary: The purpose of this public notice is to publish the Wisconsin Department of Natural Resources' new 401 Water Quality Certification and the Minnesota Pollution Control Agency's corrected 401 Water Quality Certification for the U.S. Army Corps of Engineer's 2017 nationwide permits. Both documents are attached to this notice. The 2017 nationwide permits, all 401 Water Quality certifications and denials and Coastal Zone Management Act determinations are available at: <http://www.mvp.usace.army.mil/missions/regulatory/nwp/>.

Background: On January 6, 2017, the U.S. Army Corps of Engineers Headquarters (Corps) published a notice in the *Federal Register* (82 FR 1860) announcing the reissuance of 50 existing nationwide permits (NWP), 2 new NWPs, general conditions, and definitions. After the publication of the *Federal Register* notice, the St. Paul District assessed which NWPs will be issued in the district and which will be revoked, and finalized its regional conditions. In a public notice dated May 2, 2017, the St. Paul District published its decision to regionally issue 42 NWPs and revoke 10 NWPs. A list of NWPs available in Minnesota and Wisconsin is below. The 2017 NWPs have been used in the St. Paul District since April 24, 2017, and will expire on March 18, 2022.

NWPs largely replaced regional general permits to authorize activities in waters with no more than minimal adverse effects in the St. Paul District. Three public notices dated June 19, 2017, clarify what regional general permit categories of RGP-003-MN, RGP-002-WI, RGP-004-WI the District has suspended, and what categories were modified or revoked in Minnesota and Wisconsin. Activities in waters associated with linear utility projects and linear transportation projects will continue to be authorized using current regional general permits or through an individual permit process.

401 Water Quality Certifications: All activities authorized by the NWPs under Section 404 of the Clean Water Act require 401 Water Quality Certification (WQC) from the applicable state agency, tribe or the United States Environmental Protection Agency (EPA). For each NWP, the applicable agency or tribe may issue the 401 WQC with no conditions, issue the 401 with conditions, deny the WQC, or waive the WQC. The St. Paul District has received a WQC from Wisconsin Department of Natural Resources (WDNR) and a corrected WQC from the Minnesota Pollution Control Agency (MPCA). Six other WQC decisions were previously published in the May 2, 2017 public notice.

As of June 1, 2017, the WDNR has provided the District a final WQC determination for NWPs in WI. The WQC conditionally certifies twenty-two Section 404 NWPs in WI (NWPs 3, 4, 5, 6, 13, 15, 16, 18, 20, 22, 25, 27, 28, 30, 31, 35, 36, 37, 38, 45, 53 and 54). The WDNR also denied without prejudice WQC for eight Section 404 NWPs (NWPs 17, 19, 29, 33, 40, 43, 48 and 52) and partially denied WQC for an additional eight Section 404 NWPs (NWPs 7, 32, 39, 41, 42, 44, 46 and 51) in WI.

The MPCA's previously noticed 401 WQC for Section 404 NWP activities in MN contained a typo in notification number 4. Specifically the notification read: "When riprap is used, the permittee should consider placing riprap in the following manner: a. Use natural rock (average less than 6 inches or more than 30 inches in diameter)..." This has been corrected to read: "'When riprap is used, the permittee should consider placing riprap in the following manner: a. Use natural rock (average between 6 and 30 inches in diameter)..." [new text underlined].

June 15, 2017 401 Water Quality Certification Summary Table

Location	Status	Additional 401 WQC needed from agency/tribe?
State of Minnesota	Certified, with conditions	No, unless conditions are <i>not</i> followed.
Grand Portage Reservation	Certified, with conditions	No, unless conditions are <i>not</i> followed. Tribal notification required.
Fond du Lac Reservation	Certified, with conditions	No, unless conditions are <i>not</i> followed. Tribal notification required.
All federally-recognized American Indian reservations in Minnesota and Wisconsin not listed in table	Certified	No.
State of Wisconsin	Certified, with conditions (22 NWP); partially denied (8 NWP) and denied (8 NWP)	<ul style="list-style-type: none"> • For 22 NWP: No, unless conditions are <i>not</i> followed. • For 8 NWP: Yes, from the Wisconsin Department of Natural Resources if conditions are not followed or the specific activity is not certified. • For 8 NWP: Yes, from the Wisconsin Department of Natural Resources.
Bad River Reservation	Denied	Yes, from Bad River.
Red Cliff Reservation	Denied	Yes, from US EPA.
Lac du Flambeau Reservation	Denied	Yes, from Lac du Flambeau.
Sokaogon (Mole Lake) Reservation	Denied with exception of NWP 20, 37, and 38	Yes, from Sokaogon (unless NWP 20, 37, or 38).

For all instances where WQC has been denied by a water quality certifying agency or tribe, an individual WQC will need to be received from the State, EPA or Tribe before a NWP could be verified. Contact information for all 401 certifying agencies and tribes is available on the website listed below.

Information concerning the nationwide permits and conditions may be found on the St. Paul District's web page located at: <http://www.mvp.usace.army.mil/missions/regulatory/nwp>. Questions concerning implementation of the NWP and conditions or the regional conditions within the St. Paul District can be directed to Jill Bathke (651) 290-5697 or at jill.c.bathke@usace.army.mil.

2017 Nationwide Permits Issued in the States of Minnesota and Wisconsin

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Aids to Navigation 2. Structures in Artificial Canals 3. Maintenance 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities 5. Scientific Measurement Devices 6. Survey Activities 7. Outfall Structures and Associated Intake Structures 9. Structures in Fleeting and Anchorage Areas 10. Mooring Buoys 11. Temporary Recreational Structures 13. Bank Stabilization 16. Return Water From Upland Contained Disposal Areas 17. Hydropower Projects 18. Minor Discharges 19. Minor Dredging 20. Response Operations for Oil or Hazardous Substances | <ol style="list-style-type: none"> 22. Removal of Vessels 25. Structural Discharges 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities 28. Modifications of Existing Marinas 29. Residential Developments 30. Moist Soil Management for Wildlife 31. Maintenance of Existing Flood Control Facilities 32. Completed Enforcement Actions 33. Temporary Construction, Access, and Dewatering 35. Maintenance Dredging of Existing Basins 36. Boat Ramps 37. Emergency Watershed Protection and Rehabilitation 38. Cleanup of Hazardous and Toxic Waste 39. Commercial and Institutional Developments 40. Agricultural Activities 41. Reshaping Existing Drainage Ditches 42. Recreational Facilities |
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- 43. Stormwater Management Facilities
- 44. Mining Activities
- 45. Repair of Uplands Damaged by Discrete Events
- 46. Discharges in Ditches
- 48. Commercial Shellfish Aquaculture Activities

- 51. Land-Based Renewable Energy Generation Facilities
- 52. Water-Based Renewable Energy Generation Pilot Projects
- 53. Removal of Low-Head Dams
- 54. Living Shorelines

2017 Nationwide Permits Revoked in the States of Minnesota and Wisconsin

(These activities will be reviewed using an individual permit process or other applicable general permit)

- 8. Oil and Gas Structures on the Outer Continental Shelf
- 12. Utility Line Activities
- 14. Linear Transportation Projects
- 15. U.S. Coast Guard Approved Bridges
- 21. Surface Coal Mining Activities

- 23. Approved Categorical Exclusions
- 24. Indian Tribe or State Administered Section 404 Programs
- 34. Cranberry Production Activities
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities

NOTICE TO EDITORS:

This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising. For more information call the St. Paul District Public Affairs Office, (651) 290-5807

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, Reissuance,)
and Modification of Nationwide Permits)

On January 6, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of Nationwide Permits (NWPs) in the Federal Register (agency docket number COE-2015-0017). The publication includes new, existing, and modified NWPs. Publication of these NWPs 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 NWPs 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 March 19, 2022.

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 NWPs is not included in this document. Copies of complete nationwide permits published in the Federal Register on January 6, 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. Water quality certification is denied without prejudice for activities involving the temporary stockpiling of dredged or fill material in waters of the state, including wetlands.
4. 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.
5. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these NWP's shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Nationwide Permits Granted Water Quality Certification:

- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 13 – Bank Stabilization
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 18 – Minor Discharges
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

Nationwide Permits for which Water Quality Certification is Partially Denied

WQC is certified or denied without prejudice as indicated below for the activities authorized by the following NWP. Certified activities are subject to WQC conditions 1-5 above. If activities are denied without prejudice, the applicant must apply to the WDNR for an individual 401 WQC.

- NWP 7 - Outfall Structures and Associated Intake Structures
 - WQC denied: Where the effluent from the outfall is not regulated under the WPDES permit program. WPDES permit information is available at: <http://dnr.wi.gov/topic/wastewater/PermitApplications.html>
 - WQC certified: All other NWP 7 activities.
- NWP 32 - Completed Enforcement Actions
 - WQC denied: If WDNR is not a party to the agreement or if WDNR has not concurred in writing with the settlement agreement.
 - WQC certified: All other NWP 32 activities.
- NWP 39 - Commercial and Institutional Developments
 - WQC denied: Discharges of dredged or fill material for the construction of the following attendant features: yards, recreation facilities, stormwater management facilities or wastewater management facilities.
 - WQC certified: All other NWP 39 activities.
- NWP 41 - Reshaping Existing Drainage Ditches
 - WQC denied: If any portion of the project will occur in or adjacent to a trout stream or any perennial tributaries to a trout stream. 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>.
 - WQC certified: All other NWP 41 activities.
- NWP 42 - Recreational Activities
 - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
 - WQC certified: All other NWP 42 activities.
- NWP 44 - Mining Activities
 - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
- NWP 46 - Discharges in Ditches
 - WQC denied: If the project involves the placement of any dredged or fill material into Wisconsin navigable waters as defined in s. NR 310.03(5), Wis. Adm. Code.
 - WQC certified: All other NWP 46 activities.
- NWP 51 - Land-Based Renewable Energy Generation Facilities
 - WQC denied: Discharges of dredged or fill material for the construction of the following attendant features: yards, recreation facilities, stormwater management facilities or wastewater management facilities.
 - WQC certified: All other NWP 51 activities.

Water Quality Certification Is Also Denied for the Nationwide Permits Revoked by the Corps of Engineers in Wisconsin and Listed Below:

- NWP 8 – Oils and Gas Structures on the Outer Continental Shelf
- NWP 12 – Utility Line Activities
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 21 – Surface Coal Mining Activities
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 34 – Cranberry Production Activities
- NWP 49 – Coal Re-mining Activities
- NWP 50 – Underground Coal Mining Activities

Nationwide Permits Denied Water Quality Certification Without Prejudice At This Time:

The following NWP categories are denied Water Quality Certification (WQC) in their entirety and require an individual Section 401 WQC for all activities under these NWPs. In instances where a state has denied the 401 WQC for discharges under a particular NWP, permittees must furnish the District Engineer for the COE with an individual 401 WQC.

Each category was reviewed and it was determined that: potential water quality and beneficial use impacts would be beyond that considered minimal; the activity was not likely to occur in Wisconsin; the NWP doesn't align with state general permit standards required by statute (NWP 29, 40, 43); inadequate data was available for WDNR to fully evaluate potential water quality and beneficial use impacts; or the category was empty (Reserved).

- NWP 17 – Hydropower Projects
- NWP 19 – Minor Dredging
- NWP 26 – Reserved
- NWP 29 – Residential Developments
- NWP 33 – Temporary Construction, Access and Dewatering
- NWP 40 – Agricultural Activities
- NWP 43 – Stormwater Management Facilities
- NWP 47 – Reserved
- NWP 48 – Existing Commercial Shellfish Aquaculture Activities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

Note: State water quality certification is not required for the following Section 10 only NWPs: 1 – Aids to Navigation, 2 – Structures in Artificial Canals, 9 – Structures in Fleeting and Anchorage Areas, 10 – Mooring Buoys, 11 – Temporary Recreational Structures, 28 – Modifications of Existing Marinas, 35 – Maintenance Dredging of Existing Basins.

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.

This notice is provided pursuant to section 227.48(2), Wisconsin Statutes.

Dated at Madison, Wisconsin

June 1, 2017

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

for 

Cathy Stepp, Secretary



Minnesota Pollution Control Agency

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June 6, 2017



Mr. Chad Konickson
U.S. Army Corps of Engineers
Regulatory Branch Chief, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

RE: Nationwide Permits – Revised Clean Water Act Section 401 Water Quality Certification

Dear Mr. Konickson:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under authority of Section 401 of the Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. 7001.1400-7001.1470, 7050, 7052, and 7053. The MPCA examined the information furnished by the U.S. Army Corps of Engineers (USACE), including the final Nationwide Permits (NWP) issued by USACE Headquarters on January 6, 2017, and regional conditions proposed by USACE St. Paul District October 14, 2016, and is requiring conditions through the 401 Water Quality Certification.

The MPCA certifies the referenced general NWP because there is reasonable expectation that the activities identified within them will be conducted in a manner that will not violate applicable water quality standards provided the work is done in accordance with the following conditions, which shall become conditions of the NWP:

Conditions for All NWP Activities

1. The permittee must ensure that all waters of the United States in or bordering the construction areas that are not authorized to be impacted by the project are clearly identified prior to construction. This may be done through demarcation of the construction area on plan sheets or through marking boundaries in the field, for example construction staking, flagging, or the use of silt fences along boundaries. The permittee must not impact these areas while conducting activities under this permit.
2. Compensatory mitigation as required by NWP, General Condition 23, will satisfy the MPCA rules governing wetlands, Minn. R. 7050.0186.
3. The permittee must install in-water best management practices (BMPs) to minimize total suspended solids (TSS) and sedimentation for any work conducted below the ordinary high water level (OHWL) as defined in Minn. Stat. § 103G.005, subd. 14, of any water of the United States.

The permittee must document the in-water BMPs to be used during the authorized work prior to disturbing any land at the site; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. This documentation is not required to be submitted to the MPCA, but must be kept on-site during active construction by the permittee or the permittee's contractor until the project is complete. Proper installation of BMPs is required before conducting the authorized in-water activities and properly maintained throughout the duration of the project's in-water work. While conducting the authorized work, the permittee must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. If the project activities cause an observable increase in

TSS or sedimentation as described in Minn. R. 7050.0210, subp. 2 outside or downstream of the authorized defined working area, the project activities must immediately cease and any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. This Certification does not authorize the violation of applicable water quality standards outside or downstream of the defined work area. Minnesota water quality standards are located in Minn. R. 7050.

Information on the types of BMPs that may be suitable for in-water work is located in the Minnesota Department of Natural Resources Manual titled *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004-0001*, located at:

http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

4. The permittee must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. 7050.0210, subp.2. BMPs must be used that minimize TSS and sedimentation by removing solids in the water before discharging the water. The permittee must document the in-water BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. The permittee must ensure that properly installed BMPs are in place before conducting the authorized activities and maintained throughout the duration of the dewatering work.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

5. The permittee must ensure any earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained in a manner that will prevent any of the earthen material from eroding. The permittee must completely remove temporary structures and restore original bathymetry, or contours at project completion.
6. It is the permittee's responsibility to ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303-(d) listed impaired waters. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: <http://www.pca.state.mn.us/lugg1125> and <http://www.pca.state.mn.us/mvri1126>. The applicable water quality standards are located in Minn. R. ch. 7050.

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and enforcement of this condition. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

7. Any fill used in any water of the United States must be clean fill that is free of any solid waste, toxic or hazardous contaminants, and invasive species as defined in Minn. Stat. ch. 84D and Minn. R. ch. 6216, including those discussed in "A guide to Nonnative Invasive Plants Inventory in the North by Forest Inventory and Analysis," 2009, C. Olson and A. Cholewa
http://www.nrs.fs.fed.us/pubs/gtr/gtr_nrs52.pdf.

8. The permittee must provide: a) a copy of this Certification; b) documentation of any required BMPs under conditions 3 and 4; and c) any written demarcation of waters of the United States under condition 1; to any prime contractor responsible for completing the project's authorized activities. The permittee must also ensure that there is a mechanism in place requiring each prime contractor to provide the same information to all subcontractors, at any level, responsible for fabricating or providing any material for the project or performing work at the project site. In addition, copies of these documents and any other relevant regulatory authorizations related to impacts to Waters of the United States, must be available at or near the project site for use by contractors or staff responsible for completing the project work and must be available within 72 hours when requested by the MPCA staff.
9. The permittee is responsible for compliance with all applicable conditions of this Certification.
10. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3.

Conditions Specific to Individual NWP Activities

In addition to all other applicable Certification conditions, the following activities must also comply with the activity-specific conditions below:

1. **NWP 7, Outfall Structures and Associated Intake Structures:** The permittee must ensure that impacts associated with outfall and intake structures do not harm aquatic life outside of the permitted project area and do not result in an unauthorized loss of waters of the United States without proper mitigation in accordance with General Condition 23 of NWPs.
2. **NWP 16, Return Water from Upland Contained Disposal Areas:** The permittee must ensure that return water from dredging that is directly returned to the original source water meet the same water quality standards that apply to the original source water. If the return water is discharged into a receiving water that is not the original source water, then the permittee must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water. Discharges of return water must not violate the state water quality standard identified in Minn. R. 7050.0210, subp.2.
3. **NWP 53, Removal of Low-Head Dams:** The permittee must evaluate and manage the accumulated sediment behind the structure to minimize downstream effects during and following the removal of the structure. Use low-flow and winter construction and other appropriate BMPs required in conditions 3 and 4 below.

NOTIFICATIONS: The following notifications are not conditions of the MPCA CWA 401 Certification of NWPs. They provide practices that can help reduce the potential environmental impacts or they provide notification to the public in Minnesota, that certain discharges in Waters of the State, as defined in Minn. Stat. § 115.01, subd. 22, or activities associated with discharges into Waters of the State, are also regulated under other rules administered by the MPCA:

1. Minn. R. chs. 7001 and 7090 requires any activity that will disturb one acre or more of land must first acquire a National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS) General Stormwater Permit from the MPCA for discharging stormwater during construction activity. Both the owners and operators of construction activity disturbing one acre or more of land are responsible for obtaining and complying with the conditions of the NPDES/SDS General Stormwater Permit prior to commencing construction activities. Sites disturbing less than one acre within a larger

common plan of development or sale that is more than one acre also need permit coverage. A detailed Stormwater Pollution Prevention Plan (SWPPP), containing both temporary and permanent erosion and sediment control plans, must be prepared prior to submitting an application for the NPDES/SDS General Stormwater Permit. In addition, any project that will result in over 50 acres of disturbed area and has a discharge point within one mile of a special or impaired water is required to submit their SWPPP to the MPCA for a review at least 30 days prior to the commencement of land disturbing activities. If the SWPPP is out of compliance with the terms and conditions of the NPDES/SDS General Stormwater Permit, further delay may occur. For more information, please visit the following webpage: <https://www.pea.state.mn.us/water/construction-stormwater>.

2. Minn. R. ch. 7001.0030 requires that, prior to testing the structural integrity of any newly installed pipeline or any existing pipeline maintained or repaired that is authorized by NWPs, the permittee must obtain NPDES/SDS Permit coverage from the MPCA. The NPDES/SDS Permit regulates the discharge of water and trench waters associated with this activity.
3. Chloride from winter road salt affects water quality. The MPCA encourages public road authorities pursuing projects under the general permit to consider the use of BMPs to reduce the use of chloride. General information about chloride and water quality, including the Draft Twin Cities Metropolitan Area Chloride Management Plan, is located at: <http://www.pca.state.mn.us/r0pgb86>.
4. When riprap is used, the permittee should consider placing riprap in the following manner:
 - a. Use natural rock (average between 6 inches and 30 inches in diameter) that is free of debris that may cause pollution or siltation.
 - b. A filter of crushed rock, gravel, or filter fabric material can be placed underneath the rock.
 - c. The riprap should be no more than 6 feet waterward of the OHWL as defined in Minn. Stat. § ch. 103G.005, subd. 14.
 - d. The riprap should conform to the natural alignment of shore and should not obstruct navigation or the flow of water.
 - e. The minimum finished slope waterward of the OHWL should be no steeper than 3 to 1 (horizontal to vertical).

Disclaimer:

Section 401 Certification does not release the permittee from obtaining all necessary federal, state, and local permits. It does not limit any other permit where requirements may be more restrictive. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state water statutes and rules through the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Minnesota 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 Minnesota Environmental Policy Act (MEPA) or the National Environmental Policy Act (NEPA). In accordance with MEPA, Minn. Stat. § 116D.04, subd. 2b, and related rules, projects that are required to complete an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS), may not be started until:

- A petition for an EAW is dismissed
- A negative declaration on the need for an EIS has been made
- An EIS has been determined to be adequate
- A variance has been granted by the state Environmental Quality Board

Mr. Chad Konickson
Page 5
June 6, 2017

An Environmental Review, required by law for any project, must be complete in order for any state permit or Certification to be valid.

The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001. 0170.

Pursuant to Minn. R. 7001.1450, failure to comply with any of the conditions in this Certification may result in the MPCA invalidating or revoking this 401 Water Quality Certification on a project-by-project basis.

If you have any questions on this Certification, please contact Jim Brist at 651-757-2245 or 401Certification.pca@state.mn.us.

Sincerely,



Melissa Kuskie Supervisor
Certification, Environmental Review & Rules Section
Resource Management & Assistance Division

MK/JB:ds

cc: Janice Cheng, EPA
Peter Swenson, EPA
Wendy Melgin, EPA
Kerryann Weaver, EPA
Pete Fasbender, USFWS
Andrew Horton, USFWS
Luke Skinner, DNR
Julie Ekman, DNR
Jill Bathke, USACE
Andy Beaudet, USACE
Kristen Hafer, USACE

