

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 June 18, 2025, the United States Department of the Army, Corps of Engineers (Corps), published its notice regarding the reissuance of Nationwide Permits (NWP) in the Federal Register (agency docket COE-2025-0002). The publication includes reissuance of fifty-six (56) NWP and revocation of fourteen (14) existing NWP. Publication of these NWP serves as the Corps' request to the State for *water quality certification* (WQC or Certification) under Section 401 of the Federal *Clean Water Act* (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the regulations promulgated by the Corps and United States Environmental Protection Agency pursuant to Section 401, CWA, and Chapters NR 102, 103, and 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the NWP are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. Water quality in Wisconsin will be adequately protected so long as these conditions are met, and the final NWP are consistent with the public noticed drafts. This certification shall expire when the nationwide permits expire.

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 WQC does not apply to other permit decisions, permit types, or licenses that are not expressly listed in the agency docket number COE–2025–0002. Pursuant to 40 CFR 121.5, a WQC request must be submitted to the state of Wisconsin for all individual license or permit requests. This includes projects undertaken by federal agencies including Corps projects.

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).

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

Section A. Nationwide Permits (NWP) granted Water Quality Certification (WQC):

The below NWP are granted WQC under CWA Section 401:

- NWP A – Activities to Improve Passage of Fish and Other Aquatic Organisms
- NWP 2 – Structures in Artificial Canals
- 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 7 – Outfall Structures and Associated Intake Structures
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 16 – Return Water from Upland Contained Disposal Areas
- 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 27 – Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 29 – Residential Developments
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Road Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- 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 39 – Commercial and Institutional Development
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage and Irrigation Ditches
- NWP 42 – Recreational Facilities

- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 51 – Land-based Renewable Energy Generation Facilities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

Section A.1. General Water Quality Conditions applicable to all NWPs granted WQC:

Projects and activities that require a *water quality certification* must meet all of the following conditions:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the WQC and applicable laws including the following:
 - a. Justification: On-site inspection is a critical element to gather necessary information for water quality certification decisions and quality control and assurance of data provided by the permittee. This authorization is required pursuant to s. NR 299.05(3)(d)2.c, Wis. Adm. Code.

2. The permittee shall notify the WDNR:
 - At least 5 business days prior to the beginning of the discharge, the permittee shall notify the department of its intent to commence the discharge, and
 - Within 5 business days after the completion of the discharge, the permittee shall notify the department of the completion of the discharge.
 - a. Justification: Notification provides an opportunity to schedule and conduct on-site inspections as a critical element to gather necessary information for water quality certification decisions and quality control and assurance of data provided by the permittee. This authorization is required pursuant to s. NR 299.05(3)(d)2.a-b, Wis. Adm. Code.

3. Temporary stockpiling of dredged or fill material in navigable waters of the state, including wetlands, must be removed within 60 days of initial placement of material in a waterway or wetland. The project or activity shall not result in the permanent stockpiling of dredged or fill material in navigable waters of the state, including wetlands.
 - a. Justification: Physical alterations can degrade surface waters through the filling, dredging or stockpiling of materials. Pursuant to ss. NR 102.05, Wis. Adm. Code, no waters of the state, including wetlands, shall be lowered in quality unless it has been affirmatively demonstrated to the department that such a change is justifiable. In addition, pursuant to s. NR 103.03, Wis. Adm. Code, wetlands and

other waters of the state influenced by wetlands shall be protected. To satisfy these antidegradation and water quality protection requirements, individual certification is required to properly demonstrate that temporary stockpiling of dredged or fill material is warranted.

4. The project or activity may not significantly adversely impact a state waterbody considered an *Area of Special Natural Resource Interest* (ASNRI) as defined under s. 30.01(1am), Wis. Stats. Significant adverse impacts may result in direct, indirect, secondary, or cumulative change to wetlands or water quality. Significant impacts may also injure public rights and interests, cause water pollution, or result in material injury.
 - a. Justification: Pursuant to s. NR 207, Wis. Adm. Code, Wisconsin's antidegradation standards prohibit degradation of outstanding resource waters and limits degradations to exceptional resource waters. Additionally, formal consultation with the Voigt Task Force is needed on projects or activities which could have impacts on wild rice or wild rice habitat. For these reasons, all projects or activities that have the potential to degrade ASNRI waters designated under s. 30.01(1am), Wis. Stats., are denied WQC without prejudice. ASNRI waters are available on the DNR's surface water data viewer at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>.
5. Projects or activities may not negatively impact the functional values of a wetland, create water quality impacts. Projects or activities may not result in significant adverse environmental consequences considered a *significant adverse impact*.
 - a. Justification: Pursuant to s. NR 207, Wis. Adm. Code, Wisconsin's antidegradation standards prohibit degradation of outstanding resource waters and limits degradations to exceptional resource waters. Additionally, formal consultation with the Voigt Task Force is needed on projects or activities which could have impacts on wild rice or wild rice habitat. For these reasons, all projects or activities that have the potential to degrade ASNRI waters designated under s. 30.01(1am), Wis. Stats., are denied WQC without prejudice. ASNRI waters are available on the DNR's surface water data viewer at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>.
6. The project or activity may not significantly adversely impact state *Public Rights Features* (PRFs) designated under s. NR 1.06, Wis. Adm. Code.
 - A PRF includes fish and wildlife habitat (including breeding, nesting, nursery, and feeding sites); physical features of lakes and streams that ensure the protection of water quality; reaches of banks, shores, or bed that are predominantly natural in appearance (not artificial) or that screen artificial features; and navigational thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting, or enjoyment of natural scenic beauty.

- Significant adverse impacts may result in direct, indirect, secondary, or cumulative change to wetlands or water quality. Significant impacts may also injure public rights and interests, cause water pollution, or result in material injury. Projects or activities that negatively impact the functional values of a wetland, create water quality impacts, and/or have environmental consequences are considered a *significant adverse impact*.
 - a. Justification: Pursuant to s. NR 102.04(1)(a) and NR 102.04(1)(b), Wis. Adm. Code, objectionable deposits or debris shall not be present in such amounts as to interfere with public rights in waters of the state. Public Rights Features are most sensitive to these types of deposits and warrant individual water quality certification to ensure that wildlife, recreation, and fish and aquatic life standards under ch. NR 102, Wis. Adm. Code, are satisfied. PRFs are available on the DNR's surface water data viewer at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>.
- 7. No discharges of dredged or fill material below the *ordinary high-water mark* (OHWM) of a navigable stream may take place during annual fish spawning periods or times when nursery areas would be adversely impacted unless a waiver request has been submitted and a waiver provided by the Department. These periods are:
 - September 15th through May 15th for all trout streams identified on DNR published maps. 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>.
 - September 15th through June 15th on all Great Lakes tributaries upstream to the first dam or barrier.
 - November 1st through June 15th for Lake Michigan waters surrounding Door County including Green Bay and all harbors and bays.
 - September 15th through July 1st for Lake Superior waters surrounding Douglas County including St. Louis River and all harbors and bays.
 - March 1st through June 15th for ALL OTHER waters.
 - a. Justification: Pursuant to s. NR 102.04(3), Wis. Adm. Code, aquatic life designations include spawning areas for cold water and warm water fish and aquatic life habitat. WQC conditions are derived to ensure spawning activities in Wisconsin are protected.
- 8. The permittee must install in-water *best management practices* (BMPs) to minimize *total suspended solids* (TSS), sedimentation and nutrient loadings for any work conducted below the *ordinary high-water mark* (OHWM). Any visual increase in turbidity outside of the approved impact area shall result in the project operations ceasing until BMPs have been modified to address the issue.

- a. Justification: Pursuant to ss. NR 102.04(1) and NR 102.06, Wis. Adm. Code, objectionable deposits and nutrients may not be present in amounts that interfere with public rights and interests or exceed state standards for surface water. In-water BMPs also help ensure excessive sedimentation, TSS, and nutrient loadings will not result in a violation of state wetland water quality standards under s. NR 103.03, Wis. Adm. Code.
9. The permittee may not use any materials that are considered hazardous substances. A “hazardous substance” is defined in s. 292.01(5), Wis. Stats., as any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department. Project materials may include materials used for structure placement, beneficially reused materials, or fill. If the materials proposed for use in a project or activity are considered to be a “hazardous substance,” the WQC is denied.
 - a. Justification: Pursuant to chs. NR 102, NR 103, NR 105, and s. NR 299.04(1)(b), Wis. Adm. Code, water quality criteria and limitations must be satisfied to grant WQC.
10. The permittee must ensure that any material used to construct a project is properly contained and stabilized in a manner that will prevent the material from being eroded.
 - a. Justification: Pursuant to ss. NR 102.04(1)(a), NR 102.04(1)(b), and NR 103.03, Wis. Adm. Code, objectionable deposits or debris shall not be present in amounts that interfere with public rights and interests in waterways or the functions and values of wetlands in Wisconsin.
11. The project or activity must implement planning and pretreatment of equipment to minimize spread of invasive or noxious species, designated under ch. 40, Wis. Adm. Code.
 - a. Justification: Pursuant to s. NR 103.03(2)(f)3., Wis. Adm. Code, WQC must prevent conditions conducive to the establishment or proliferation of nuisance organisms in order to protect existing waterways and wetland habitat and ecosystems. Invasive species threaten the “protection and propagation of a balanced fish and other aquatic life community” under the “Fish and other aquatic life” designated use in s. NR 102.04(3), Wis. Adm. Code.

12. Whenever a permittee is completing sediment sampling and analysis, monitoring or disposal of materials from any dredging project, proper sampling and quality assurance methods shall be implemented in alignment with ch. NR 347, Wis. Adm. Code.
 - a. Justification: In order to protect the public rights and interests in the waters of the state and to ensure that data quality is representative of site conditions to make informed WQC decisions, all data gathering, sampling, monitoring, data analysis and disposal shall be completed using proper sampling and quality assurance methods in alignment with ch. NR 347, Wis. Adm. Code.

13. For projects or activities within streams, the project must maintain base flow of the stream at all times during construction.
 - a. Justification: Pursuant to chs. NR 102 and 103, Wis. Adm. Code, the project or activity shall not adversely impact public rights and interests in waterways or the functions and values of wetlands in Wisconsin. Reducing and/or eliminating base flow in a stream channel results in significant adverse impacts to the aquatic resource and public interests by means of thermal and physical impacts, degrading water quality. Pursuant to s. NR 102.04(4) and ch. NR 102, Subch. II, Wis. Adm. Code, objectionable changes in a stream's base flow may not be reduced to lower flows that interfere with public rights and interests or exceed temperature standards for surface waters. Construction practices to maintain base flow also help ensure the project or activity will not result in a violation of state wetland water quality standards under s. NR 103.03, Wis. Adm. Code.

14. The project or activity will not result in a conversion of state navigable waters to uplands or an enclosure of state navigable waters that would result in an interference with the public rights in those waters.
 - a. Justification: Pursuant to s. NR 102.04(1)(a) and (b), Wis. Adm. Code, objectionable deposits or debris shall not be present in such amounts as to interfere with public rights in waters of the state. The State of Wisconsin holds all navigable waters within the State in trust for the benefit of the public. These public rights include recreational uses such as hunting, fishing, swimming, and boating. *See Muench v. Public Service Comm.*, 261 Wis. 492 (1952).

Section A.2. Certain Water Quality Conditions applicable to Specific NWP's granted WQC:

In addition to meeting all standards described in Section A.1., projects eligible to proceed under a specific NWP listed below must also meet the additional standards listed below:

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 meets 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.

Justification: The return water shall not violate state water quality standards established under chs. NR 102, 103, 104, 105, 106, 207, and 217, Wis. Adm. Code.

NWP 18. Minor Discharges:

- ❖ The permittee must ensure that direct and secondary impacts to wetlands do not exceed 400 sq. ft. (SF). If the project or activity results in more than 400 SF of wetland impacts, WQC is denied to NWP 18 activities.

Justification: Pursuant to s. NR 103.03(2)(d), Wis. Adm. Code, wetlands shall be protected from cumulative impacts of discharges which may result in concentrations or combinations of substances which are toxic or harmful to human, animal, or plant life.

Ensuring that the eligibility standard for wetland impacts encompasses primary and secondary impacts will help provide adequate protection from cumulative impacts.

- ❖ The activity or project scope shall not include installation of perforated drain tile which would have a hydrologic impact to a waterway or wetland. If the proposed activity includes the installation of perforated drain tile, WQC is denied for NWP 18 activities.

Justification: Section NR 103.03(1)(a) and (b), Wis. Adm. Code, requires that waterway and wetland hydrology and storm and flood water storage be adequately protected.

NWP 46 – Discharges in Ditches: The permittee must remove temporary fill within 60 days of placing the material in a waterway or wetland unless mitigation is provided for the temporary loss of function.

Justification: This material can be a source of TSS and nutrients, particularly phosphorus to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).

NWP 51 – Land-based Renewable Energy Generation Facilities:

- ❖ The permittee must remove temporary fill, including construction access matting, within 60 days of placing the material in a waterway or wetland unless a restoration plan or appropriate wetland mitigation is provided for the temporary loss of function.

Justification: This material can be a source of TSS and nutrients, particularly phosphorus, to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).

- ❖ The project or activity may not convert wetlands to stormwater treatment facilities.

Justification: Pursuant to s. NR 103.03(1)(a), Wis. Adm. Code, state wetland water quality standards require that wetlands are maintained within natural variation from storm and flood water storage and retention and the moderation of water level fluctuation extremes.

- ❖ The project or activity shall not impact more than 300 linear feet (LF) of the stream tributary. If the proposed project or activity would impact more than 300 LF of a stream tributary, WQC is denied for NWP 51 activities.

Justification: Activities and disturbances in or near navigable waterways impact and influence the health of the aquatic resource. Construction and land disturbances are a known source of TSS and nutrients (particularly phosphorus) to the receiving water (chs. NR 102 and 103, Wis. Adm. Code). Pursuant to ch. NR 207, Wis. Adm. Code, antidegradation requirements must be satisfied for new or increased discharges to waters of the state. This analysis requires individual WQC.

NWP 53 – Removal of Low-Head Dams: The permittee shall ensure that accumulated sediment is adequately controlled to ensure a sediment release does not result from the removal of low-head dams. If a sediment release would occur as part of this activity, WQC is denied for NWP 53 activities.

Justification: This material can be a source of TSS and nutrients, particularly phosphorus to the receiving water (chs. NR 102 and 103, Wis. Adm. Code).

Section B. Justifications for specific NWPs denied WQC without prejudice:

The following NWPs are highly diverse and include a wide range of activities. An Individual WQC will ensure the project or activity is designed and constructed according to state waterway and wetland standards. Therefore, the following NWPs are not granted WQC at this time:

- NWP 17 – Hydropower Projects
 - Justification: The NWP is overly broad and can include a wide range of activities. The broad category of activities covered could significantly impact phosphorus and thermal impacts to waterways. Because Wisconsin has numeric standards for phosphorus and temperature pursuant to ch. NR 102, Wis. Adm. Code, individual WQC is required to determine thermal and nutrient loadings from these areas. Individual WQC will also help ensure that state wetlands standards under ch. NR 103, Wis. Adm. Code are satisfied.
- NWP 43 – Stormwater Management Facilities
 - Justification: The permittee may not convert state navigable waterways or wetlands to treat stormwater. Pursuant to s. NR 103.03(1)(a), Wis. Adm. Code, state wetland water quality standards require that wetlands are maintained within natural variation from storm and flood water storage and retention and the moderation of water level fluctuation extremes. Pursuant to s. NR 102.04(1)(a) and (b), Wis. Adm. Code, objectionable deposits and debris shall not be present in amounts that will interfere with public rights.

- NWP 44 – Mining Activities
 - Justification: The NWP is overly broad and can include a range of activities. Given the proximity of these activities to surface waters, there is an increased risk that heavy metals or other toxic substances regulated under chs. NR 105 and 106, Wis. Adm. Code, may be discharged in surface waters at levels that may not comply with state standards.
- NWP 52 – Water-based Renewable Energy Generation Pilot Facilities
 - Justification: The NWP is broad and can include a range of activities. Given the water-based necessity of these energy generation pilot facilities, there is potential for unknown risk for water quality impacts that may be discharged in surface waters at levels that may not comply with state standards. Individual WQC is appropriate to ensure that state water quality standards for fish and aquatic life uses and criteria under s. NR 102.04, Wis. Adm. Code, are satisfied.

Section C. NWPs not requiring WQC:

The following NWPs are either outside of state authority or are activities that are not reasonably expected to result in a discharge to navigable waterways or wetlands:

- NWP 1 – Aids to Navigation

Section D. NWPs revoked within the St. Paul District - WQC not required:

The following NWPs have been revoked and are not available for use in the St. Paul District; therefore, the department is not taking action on these NWPs and concludes that a new notification and pre-filing meeting would be required for these NWPs should the position of the St. Paul District change and these NWPs become available for use in the St. Paul District:

- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 12 – Oil or Natural Gas Pipeline 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 48 – Commercial Shellfish Mariculture Activities
- NWP 49 – Coal Remining Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 55 - Seaweed Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

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, Wis. Stats., 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. A request for a contested case hearing shall include a written statement giving specific reasons why a proposed activity violates the standards under s. NR 299.04(1)(b), Wis. Adm. Code, as applicable, and provide specific information explaining why the petitioner's interests are adversely affected by the Department's determination. The request for hearing shall also include a written statement specifying that the petitioner will appear and present information supporting the petitioner's objections in a contested case hearing. This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Adm. Code and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wis. Stats., 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 on November 13, 2025.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY



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Waterways Program