



**US Army Corps
of Engineers®**

St. Paul District

Appendix B: Clean Water Act

Lock and Dam No. 5

**Lower Guide Wall End Cell Project
Minnesota City, MN**

May 2026

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December 21, 2020

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 – Clean Water Act Section 401 Water Quality Certification

Dear Chad 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. chs. 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 proposed Nationwide Permits (NWP) issued by USACE Headquarters on September 15, 2020, and regional conditions proposed by USACE St. Paul District September 18, 2020, and proposes requiring conditions through the 401 Water Quality Certification (401 Certification or Certification).

Exclusion from 401 Certification of NWPs

1. Physical Alterations of 300 or More Linear Feet of a Stream or River

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that protect and maintain existing and beneficial uses. For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) for projects that will cause a physical alteration of 300 or more linear feet of a stream or river that are not covered under NWP 13, Bank Stabilization or projects that will result in a functional lift of waters impacted by the projects activities. Minn. R. ch. 7050.0255 subp. 30, defines "physical alteration" as "a physical change that degrades surface waters such as the dredging, filling, draining, or permanent inundation of a surface water." *The MPCA Authority: Minn. R. ch. 7050.0255. Physical alterations to smaller streams can potentially have significant impact on overall water quality. The MPCA must individually review these projects for compliance with Water Quality Standards (WQS).*

2. Exceptional Aquatic Life Use Waters (Attachment 1)

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that protect and maintain existing and beneficial uses. For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) for projects that will cause a physical alteration of Exceptional Aquatic Life Use Waters. Exceptional Aquatic Life Use Waters are very susceptible to disturbance. An increase in water temperature or sedimentation can effectively destroy this unique water habitat. Projects that will potentially impact Exceptional Aquatic Life Use Waters directly or indirectly by impacting stream hydrology, connectivity, chemistry and habitat are required to

obtain an individual Certification. *The MPCA Authority: Minn. R. ch. 7050.0222 subps. 2c, 3c and 4c.*

Because Exceptional Aquatic Life Use Waters are very susceptible to disturbance, the MPCA must individually review projects for compliance with WQS for the following water bodies:

More information on the water bodies is located at the 401 webpage:

<https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>.

	Water Body Name	Miles	Reach
1	Cross River	14.84	Fourmile Cr. To Lk Superior
2	Greenwood River	7.29	Greenwood Lk to Brule R
3	Irish Creek	7.07	Headwaters to Swamp River Reservoir
4	Kimball Creek	8.98	Headwaters to Lk Superior
5	Manitou River	11.07	S Br Manitou R to Lk Superior
6	Mistletoe Creek	4.56	Halls Pond to Poplar R
7	Two Island River	11.44	Unnamed Cr to Lk Superior
8	Little Devil Track River	2.71	Unnamed Cr to Devil Track R
9	Heartbreak Creek	3.79	Unnamed Cr to Temperance R
10	Houghtaling Creek	1.7	Unnamed Cr to Unnamed Cr
11	Caribou River	5.51	Amenda Cr to Unnamed Cr
12	Caribou River	1.18	Unnamed Cr to Unnamed Cr
13	Crown Creek	1.68	Fry Cr to Unnamed Cr
14	Cascade River	14.46	N Br Cascade R to Lk Superior
15	Spruce Creek (Deer Yard Creek)	3.21	Unnamed Cr (Ward Lk outlet) to Lk Superior
16	Bluff Creek	2.68	East Twin Lk (16-0145-00) to South Brule R
17	Elbow Creek	0.81	Unnamed Cr to Devil Track R
18	Wanless Creek	2.73	Headwaters (Dam Five Lk 38-0053-00) to Houghtaling Cr
19	Lullaby Creek	1.82	Headwaters (Lullaby Lk 16-0100-00) to Brule R
20	Manitou River, South Branch	5.42	Junction Cr to Manitou R
21	Sixmile Creek	3.32	Unnamed Cr to Temperance R
22	Swamp River	1.91	Stevens Lk to T63 R4E S20, east line
23	Brule River	12.58	BWCA boundary to South Brule R
24	Baptism River, West Branch	2.68	-91.3381 47.4702 to Crown Cr
25	Kadunce River (Kadunce Creek)	2.69	-90.1484 47.8261 to Lk Superior
26	Portage Brook	5.85	CSAH 16 to Pigeon R
27	Temperance River	15.05	T61 R4W S4, north line to Sixmile Cr
28	Baptism River, East Branch	3.28	Lk Twenty-three to Blesner Cr
29	Woods Creek	1.84	-90.2650 47.7964 to Devil Track R
30	Devil Track River	6.66	Devil Track Lk to Unnamed cr

31	Humphrey Creek	3.67	Headwaters to Boulder Cr
32	Coyote Creek	1	Unnamed Cr to Pequaywan Lk
33	Cloquet River	13.95	Headwaters (Katherine Lk 38-0538-00) to T57 R10 S32, south line
34	Cloquet River	26.44	T56 R10 S5, north line to W Br Cloquet River
35	Cloquet River	28.82	W Br Cloquet R to Island Lake Reservoir
36	Schoolcraft River	7.78	Frontenac Cr to Plantagenet Lk
37	Prairie River, West Fork	2.31	Hartley Lk to Prairie R
38	Willow River Ditch	3.3	Willow River Flowage to Moose R
39	Tamarack River	7.52	Little Tamarack R to Prairie R
40	Prairie River	11.31	Day Bk to Balsam Cr
41	Bee Creek (Waterloo Creek)	3.45	T101 R6W S29, north line to MN/IA border
42	Tulaby Creek	5.08	Tulaby Lk to McCraney Lk
43	Little Isabella River	11.02	Headwaters to Flat Horn Lk
44	Snake River	1.71	T61 R9W S7, south line to T61 R10W S12, north line
45	Jack Pine Creek	7.24	Headwaters to Mitawan Cr
46	Mitawan Creek	8.18	Kitigan Lk to T61 R9W S13, north line
47	Denley Creek	3.13	Nira Cr to Stony R
48	Cross River	3.79	Ham Lake Outlet to Gunflint Lk
49	Bezhik Creek	0.9	BWCA boundary to Moose R

3. Prohibited Outstanding Resource Value Waters (Attachment 2)

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that "prohibit a net increase in loading or other causes of degradation to prohibited outstanding resource values waters" For this reason, the MPCA denies certification without prejudice for projects resulting in permanent degradation (impacts longer than 12 months) to prohibited outstanding resource value waters (ORVWs). The MPCA does not find that NWP authorizations for broad categories of activities, where specific impacts may vary, is appropriate for activities in these waters. Therefore, the MPCA excludes from this general 401 Certification of the NWPs any project taking place in whole or in part in a listed prohibited ORVW in Minnesota, as identified in Minn. R. 7050.0335, subp. 3, and listed below. Such projects, though authorized by the NWPs, require individual 401 Certification from the MPCA. *The MPCA Authority: Minn. R. ch. 7050.0255 – 7050-0335. The MPCA needs to be able to individually review projects for compliance with WQS.*

Minn. R. 7050.0335 DESIGNATED OUTSTANDING RESOURCE VALUE WATERS.

Subp. 3. **Prohibited outstanding resource value waters.** For the purposes of parts 7050.0250 to 7050.0335, the following surface waters are prohibited outstanding resource value waters:

More information on the water bodies is located at the 401 webpage:

<https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>.

A. Waters within the Boundary Waters Canoe Area Wilderness;

- B. Those portions of Lake Superior north of latitude 47 degrees, 57 minutes, 13 seconds, east of Hat Point, south of the Minnesota-Ontario boundary, and west of the Minnesota-Michigan boundary;
- C. Waters within Voyageurs National Park;
- D. The following scientific and natural areas:
 - 1) Boot Lake, Anoka County;
 - 2) Kettle River in Sections 15, 22, 23, T.41, R.20, Pine County;
 - 3) Pennington Bog, Beltrami County;
 - 4) Purvis Lake-Ober Foundation, Saint Louis County;
 - 5) Waters within the borders of Itasca Wilderness Sanctuary, Clearwater County;
 - 6) Iron Springs Bog, Clearwater County;
 - 7) Wolsfeld Woods, Hennepin County;
 - 8) Green Water Lake, Becker County;
 - 9) Black Dog Preserve, Dakota County;
 - 10) Prairie Bush Clover, Jackson County;
 - 11) Black Lake Bog, Pine County;
 - 12) Pembina Trail Preserve, Polk County; and
 - 13) Falls Creek, Washington County; and
- E. The following state and federal designated wild river segments:
 - 1) Kettle River from the site of the former dam at Sandstone to its confluence with the Saint Croix River; and
 - 2) Rum River from Ogechie Lake spillway to the northernmost confluence with Lake Onamia.

4. Restricted ORVWs (Attachment 2)

The MPCA's antidegradation standard (Minn. R. 7050.0270) requires that the MPCA issue control documents that "restrict net increases in loading or other causes of degradation as necessary to maintain the exceptional characteristics for which the restricted outstanding resource value waters...were designated." The MPCA does not find that NWP authorizations for broad categories of activities, where specific impacts may vary, is appropriate for activities in these waters. Therefore, the MPCA excludes from this general 401 Certification of the NWPs any project taking place in whole or in part in a listed restricted ORVW in Minnesota, as identified in Minn. R. 7050.0335, subp. 1, and listed below. Such projects, though authorized by the NWPs, require individual 401 Certification from the MPCA. *The MPCA Authority: Minn. R. ch. 7050.0255 – 7050-0335. The MPCA needs to be able to individually review projects for compliance with WQS.*

NOTE: Projects that will potentially impact calcareous fens identified as restricted ORVWs in Minn. R. 7050.0335, subp. 1, are also required to have an approved Fen Management Plan from the Minnesota Department of Natural Resources (DNR) which is sufficient to ensure maintenance of the exceptional characteristics for which the fens were designated as restricted ORVWs.

Minn. R. 7050.0335 DESIGNATED OUTSTANDING RESOURCE VALUE WATERS.

Subpart 1. **Restricted outstanding resource value waters.** For the purposes of parts 7050.0250 to 7050.0335, the following surface waters are restricted outstanding resource value waters:

More information on the water bodies is located at the 401 webpage:

<https://www.pca.state.mn.us/water/clean-water-act-section-401-water-quality-certifications>.

- A. Lake Superior, except those portions identified in subpart 3, item B, as a prohibited outstanding resource value waters.
- B. Those portions of the Mississippi River from Lake Itasca to the southerly boundary of Morrison County that are included in the Mississippi Headwaters Board comprehensive plan dated February 12, 1981.
- C. Lake trout lakes, both existing and potential, as determined by the Commissioner in conjunction with the DNR, outside the boundaries of the Boundary Waters Canoe Area Wilderness and Voyageurs National Park and identified in parts 7050.0460 to 7050.0470.
- D. The following state and federal designated scenic or recreational river segments:
 - 1) Saint Croix River, entire length;
 - 2) Cannon River from northern city limits of Faribault to its confluence with the Mississippi River;
 - 3) North Fork of the Crow River from Lake Koronis outlet to the Meeker-Wright county line;
 - 4) Kettle River from north Pine County line to the site of the former dam at Sandstone;
 - 5) Minnesota River from Lac qui Parle dam to Redwood County State-Aid Highway 11; Mississippi River from County State-Aid Highway 7 bridge in Saint Cloud to northwestern city limits of Anoka; and
 - 6) Rum River from State Highway 27 bridge in Onamia to Madison and Rice Streets in Anoka.

401 Certification of NWP

The MPCA proposes to certify the referenced general NWPs because there is reasonable assurance 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 NWPs:

Conditions for All NWP Activities

- 1. Mitigation required by an NWP must comply with Minn. R. ch. 7050.0186. *The MPCA Authority: Minn. R. ch. 7050.0186, Minn. R. 7050.0155. This condition is needed to ensure unavoidable physical alterations are properly mitigated.*
- 2. The applicant must ensure that all surface waters 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 applicant must not impact any non-construction areas while conducting activities under this permit. *The MPCA Authority: Minn. R. ch. 7001.0150). This condition is needed to protect surface waters not within the project boundaries.*

3. Applicants must install in-water best management practices (BMPs) necessary 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 surface water.
4. The applicant 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 for the purpose of the 401 Certification, but must be kept on-site during active construction by the applicant or the applicant'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 applicant must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce TSS or sedimentation. Visual inspection should occur every seven days and within 24 hours after a rainfall event greater than ½ inch in 24 hours. If the project activities cause an observable increase in TSS or sedimentation as described in Minn. R. ch. 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. *The MPCA Authority: Minnesota water quality standards are defined in Minn. R. ch. 7050 and 7052. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*

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

https://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 may enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: 401Certification.pca@state.mn.us.

5. The applicant must ensure that any dewatering activities do not create nuisance conditions as defined in Minn. R. ch. 7050.0210, subp. 2. BMPs must be used that minimize TSS and sedimentation by removing solids in the water before discharging the water. If discharging to an upland area, the discharge must be directed to an onsite sediment basin prior to discharging and the discharge shall not cause erosion, and must not cause inundation, or sedimentation to the receiving water. The applicant must document the in-water BMPs prior to beginning any dewatering, this includes the point of withdrawal and the point of discharge; 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 for the purpose of the 401 Certification. The applicant 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 Authority: Minn. R. ch. 7050.0210, subp. 2 and 7050.0150. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: [REDACTED]

6. The applicant must ensure any earthen material used to construct or improve temporary or permanent dikes or dams, including cofferdams, or any roads, is contained and stabilized in a manner that will prevent any of the earthen material from eroding. The applicant must completely remove temporary structures and restore original bathymetry, or contours at project completion. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. BMPs need to be installed function properly in order to ensure compliance with state water quality standards.*
7. It is the applicant'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/lupg1125> and <http://www.pca.state.mn.us/mvri1126>. *The MPCA Authority: Applicable water quality standards are located in Minn. R. ch. 7050. This condition is needed to ensure compliance with state water quality standards.*

The MPCA is responsible for interpretation of the requirements of this condition, determining compliance with the requirements of this condition, and may enforcement this condition independent of the general permit. The point of contact at the MPCA for questions regarding this condition is: [REDACTED]

8. Projects permitted under any NWP must implement planning and prewashing of equipment, prior to entering the site, to minimize the spread of invasive or noxious species. Fill used in any surface water 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, and noxious weeds as defined in Minn. Stats. 18.75-18.91. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. This condition is needed to ensure compliance with state water quality standards.*
9. The applicant must provide: a) a copy of this Certification; b) documentation of any required BMPs under condition 3 above; and c) any written demarcation of waters of the United States under condition 2; to any prime contractor responsible for completing the project's authorized activities. The applicant 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 of surface waters, 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. *The MPCA Authority: Minn. R. ch. 7050.0270 and 7050.0150. This condition is needed to ensure that all contractor activities meet State water quality standards.*

10. The applicant is responsible for compliance with all applicable conditions of this Certification. *The MPCA Authority: Minn. R. chs. 7050.0270 and 7050.0150. This condition is needed to ensure that all contractor activities meet State water quality standards.*
11. This Certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp.3. *The MPCA Authority: Minn. R. ch. 7001.0150. This condition is needed to ensure the applicant follows state permitting requirements.*

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. *The MPCA Authority: Minn. R. ch. 7050.0270.*

- **NWP 7, Outfall Structures and Associated Intake Structures**
The applicant 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 surface waters. *The MPCA Authority: Minn. R. ch. 7001.0150). This condition is needed to protect surface waters not within the project boundaries.*
- **NWP 16, Return Water from Upland Contained Disposal Areas**
The applicant must ensure that return water from Upland Contained Disposal Areas, that is 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 applicant must ensure that the discharge water will meet the more stringent water quality standard of the receiving water and the original source water. *The MPCA Authority: Discharges of return water must not violate the state water quality standard identified in Minn. R. 7050.0210, subp.2. This condition is needed to protect surface water from excess sediment in the form of TSS and any contaminants contained in the TSS.*
- **NWP 19 Minor Dredging**
Projects exceeding 50 CY of impacts are not certified and require an individual review and 401 Certification. *The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.*
- **NWP 27 Wetland and Riparian Restoration and Creation Activities**
For restoration and creation activities, the applicant must meet the following conditions:
 - o Manage sediment to minimize downstream effects.
 - o Use low-flow and winter construction when appropriate.
 - o Provide mitigation for any conversion of surface waters to uplands.*The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.*
- **NWP 53 Removal of Low-Head Dams**
Projects involving the removal of low-head dams must meet the following conditions:

- o Manage sediment to minimize downstream effects.
- o Use low-flow and winter construction when appropriate.

The MPCA Authority: Minn. R. ch. 7050.0305, and 7050.0270. This condition is needed to protect the beneficial and existing uses of surface waters.

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 rules administered by the MPCA:

1. It is the applicant's responsibility to fully comply with all MPCA rules governing waters of the state, including MPCA rules governing wetlands (Minn. R. 7050.0186) which require an applicant to provide compensatory mitigation for the project's unavoidable physical alterations to wetlands, including those not subject to federal jurisdiction under section 404 of the CWA.
2. Minnesota water quality standards found in Minn. R. ch. 7050, apply in all water of the state, defined in Minn. Stats. 115.01 subd. 22, "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.
3. Applicants should review Total Maximum Daily Load (TMDL) / Watershed Restoration and Protection Strategy (WRAPS) projects to determine if they are applicable to their project. A list of WRAPS/TMDL projects is available at: <https://www.pca.state.mn.us/water/total-maximum-daily-load-tmdl-projects>.
4. Any projects in Cold Water Habitat waters, not excluded in Exceptional Aquatic Life Use Waters above and identified as class 2A, 2Ae, or 2Ag in part Minn. R. ch. 7050.0470, are required by the Code of Federal Regulations, title 40, section 131.10, to reflect an existing beneficial use or a feasibly attainable beneficial use, that permits propagating and maintaining a healthy community of cold water aquatic biota and their habitats. Existing beneficial use for cold water habitats means a beneficial use that was attained in a water body on or after November 28, 1975. Any project that impacts a Cold Water Habitat water must ensure that the Beneficial and Existing Uses are maintained.
5. 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.pca.state.mn.us/water/construction-stormwater>.

6. 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 applicant 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.
7. 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 Twin Cities Metropolitan Area Chloride Management Plan, is located at: <https://www.pca.state.mn.us/water/salt-applicators>.
8. When riprap is used, the applicant 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. § 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).
9. Section 401 Certification does not release the applicant 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 applicant'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 applicant 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.
10. This Certification does not replace or satisfy environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA). 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, and final governmental decisions to grant a permit, approve a project, or begin a project may not be made, 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.

11. The MPCA reserves the right to modify this Certification or revoke this Certification as provided in Minn. R. 7001.0170.

12. 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 [REDACTED]
[REDACTED]

Sincerely,



Anna Hotz
Supervisor
Agency Rules Unit
Resource Management and Assistance Division

AH/JB:ds

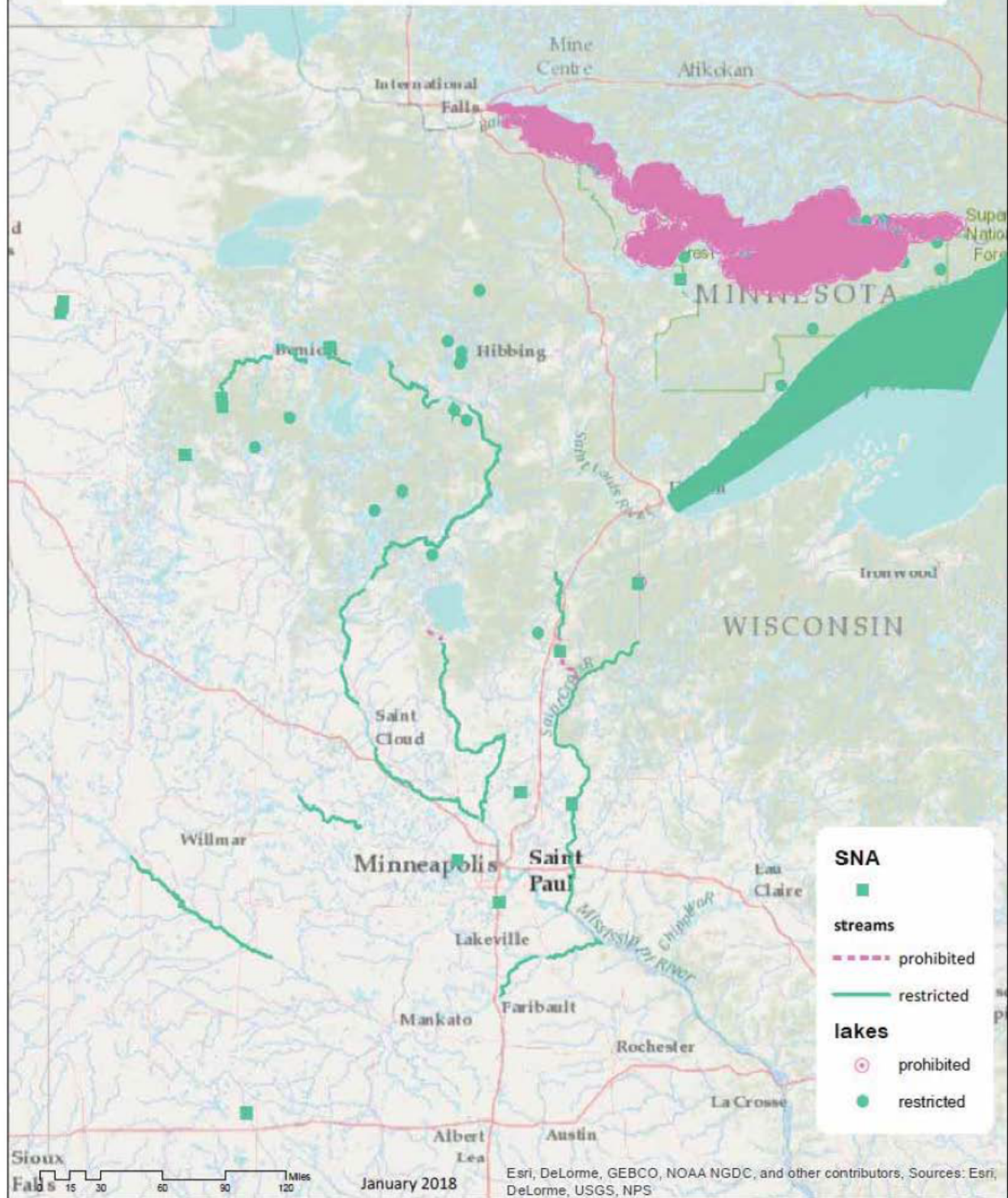
Attachments

cc: Melissa Blankenship, EPA
Dave Pfeifer, EPA
Dana Rzeznik, EPA
Dawn Marsh, USFWS
Sarah Quamme, USFWS
Tom Hovey, DNR
Steve Colvin, DNR
Kerryann Weaver, EPA
Todd Vesperman, USACE
Meghan Brown, USACE

Exceptional Aquatic Life Use Streams



Minnesota's Outstanding Resource Value Waters



Nationwide Permits

3. Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance 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 conducting the maintenance activity, 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.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

2021 Nationwide Permits (NWP)

St. Paul District Regional Conditions for Minnesota and Wisconsin

To qualify for NWP authorization, the prospective permittee must comply with the following regional conditions, as applicable, in addition to any case specific conditions imposed by the division engineer. The St. Paul District Regulatory website will provide current information regarding NWPs and the necessary 401 Water Quality Certifications at

<https://www.mvp.usace.army.mil/missions/regulatory/nwp/>. Every person who wishes 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.

The following NWPs have been revoked and are not available for use in St. Paul District: NWPs 8, 12, 14, 15, 21, 23, 24, 34, 48, 49, 50, 55, 56, 57, and 58.

Information on other permits available for use in St. Paul District can be found at:

<https://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/>.

Any regulated activity eligible for authorization under a St. Paul District Special Area Management Plan (SAMP) general permit is not eligible for authorization by NWPs.

The following regional conditions are applicable to all NWPs:

- A. **Linear Projects:** No linear utility or linear transportation projects are eligible for authorization by NWPs. These projects will be reviewed for authorization under the St. Paul District's regional general permits or an individual permit.
- B. **Temporary Impacts:** All regulated temporary impacts to waters of the U.S. must comply with the following criteria:
 - (1) If the temporary impacts in waters of the U.S., including wetlands, that occur as a result of the regulated activity would remain in place for longer than 90 days between May 15 and November 15, a PCN is required.
 - (2) Any PCN with temporary impacts must specify how long the temporary impact will remain and include a restoration and re-vegetation plan showing how all temporary fills and structures will be removed and the area restored to preconstruction contours and elevations. Native, non-invasive vegetation must be used unless otherwise authorized by a Corps NWP verification.
- C. **PCNs for Apostle Islands National Lakeshore and Madeline Island:** A project proponent must notify the District by submitting a PCN if the regulated activity would result in excavation, fill, or the placement of a new structure within the boundaries of Apostle Islands National Lakeshore and Madeline Island in Wisconsin. Regulated activities authorized under NWP 3 (Maintenance) are not subject to this condition unless they include bank shaping or excavation.
- D. **Calcareous fens:**
 - WISCONSIN:** No work in a calcareous fen is authorized by a NWP unless the Wisconsin Department of Natural Resources (WI DNR) has approved a permit for the proposed regulated activity. Project proponents must provide evidence of an approved permit to the District.
 - MINNESOTA:** No work in a calcareous fen is authorized by a NWP unless the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to a project that otherwise qualifies for authorization by a NWP. Project proponents must provide evidence of an approved fen management plan to the District. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.

- E. **Special Aquatic Resources:** A project proponent must notify the District by submitting a PCN if a regulated activity would occur in any of the following aquatic resources:
- (1) State-designated wild rice waters^{1,2};
 - (2) Bog wetland plant communities^{1,3};
 - (3) Fens^{1,3};
 - (4) Coastal plain marshes^{1,4};
 - (5) Interdunal wetlands^{1,4};
 - (6) Great Lakes ridge and swale complexes^{1,4};
 - (7) Aquatic resources within Lake Superior National Estuarine Research Reserve;
 - (8) Ramsar wetland sites, including: the Horicon Marsh, Upper Mississippi River Floodplain Wetland, Kakagon and Bad River Slough, Door Peninsula Coastal Wetlands, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway. The complete up to date Ramsar list is available at <https://rsis Ramsar.org>.

The following regional conditions are applicable to a specific NWP:

- F. **NWP 52. Water-Based Renewable Energy Generation Pilot Projects:** NWP 52 does not authorize structures or work in Lake Michigan and Lake Superior within the geographic regulatory boundaries of the St. Paul District.
- G. **NWP 3, 33, and 41. Aquatic Resource Impacts:** A project proponent must notify the District by submitting a PCN if a regulated activity, including but not limited to, filling, flooding, excavating, or drainage of waters of the U.S., involves:
- (1) A permanent loss of greater than 1/10 acre of waters of the U.S. for NWP 3 and 41; or
 - (2) over 1/2 acre of temporary impacts to waters of the U.S. for NWP 3, 33, and 41.
- H. **NWP 27. Aquatic Habitat Restoration, Establishment and Enhancement Activities:** NWP 27 does not authorize the permanent conversion of forested, bog, fen, sedge meadow, or shrub-carr wetlands to other plant communities. A project proponent may request, in writing, a waiver from this condition from the District. The waiver will only be issued if it can be demonstrated that the conversion would restore wetland plant communities to the pre-settlement condition or a watershed approach and that the current landscape and hydrologic conditions would sustain the targeted community.

¹ Information about Wisconsin plant community types for 1-6 above may be obtained from: <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>

² Information regarding wild rice waters and their extent may be obtained from: <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biota-wild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

³ Additional information on bog and fen communities can be found at: <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>.

⁴ Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes are specific to Wisconsin

2021 Nationwide Permit General Conditions

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 or her 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 Structures and 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 designated critical habitat or critical habitat proposed for such designation. 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 or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(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 an 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 an 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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(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 NWP.

(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 or federal, 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 an 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(l)(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 an 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 an 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, and perennial and intermittent streams, 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 e-mail, 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 e-mail 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.