

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

This amendment provides water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for U.S. Army Corps of Engineers’ 2012 Nationwide Permits (NWP) and the associated conditions and definitions.

Section 404 of the Clean Water Act (CWA) requires a permit from the Corps of Engineers (Corps) for the discharge of dredged or fill materials into the nation’s waters. Section 401 of the CWA requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis (i.e., NWP). General permits, including NWP, can be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission previously provided Section 401 certification for the existing NWP and regional permits. These permits are referenced in paragraph 61.2(2)“g.”

The Corps issued the final 2012 Nationwide Permits (NWP) in the Federal Register on February 21, 2012. The Corps allowed one NWP to expire and not be reissued. This NWP was never used in Iowa. The Corps issued two new NWP. The Rock Island District deleted a Regional Condition to be used within the state of Iowa that has been incorporated into the NWP at the Corps Headquarters level. This amendment provides Section 401 certification for the modified and new NWP, conditions and definitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 8, 2012, as **ARC 9998B**. Changes were made to Notice based upon the comments received on March 13, 2012. A new Iowa Section 401 Water Quality Certification condition dealing with heavy equipment use in stream channels was added to Chapter 61 (new subparagraph 61.2(2)“g”(9)), and the Category 4c Impaired Waters list is being added to the special waters of concern for coordination with the Department before the Corps takes action on applications for projects impacting those water bodies. No other changes were made from the Notice of Intended Action.

With the adoption of this amendment, the DNR is certifying the nationwide permits, general conditions and definitions.

After analysis and review of this rule making, there should be a positive impact on jobs. This amendment is intended to have a positive impact on small businesses. The Iowa certification of the NWP will reduce the regulatory burden on permit applicants by allowing these businesses to avoid individual certifications for their projects. The adoption of this amendment will allow projects to proceed more rapidly and should therefore allow more projects to be undertaken and completed, thus boosting economic activity.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

This amendment will become effective on June 20, 2012.

The following amendment is adopted.

Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps)

nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, ~~and 50, 51, and 52~~ as well as Corps regional permits 7, 27, 33, and 34 as promulgated ~~February 16, 2011~~ June 20, 2012, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

~~(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.~~

~~(5)~~ (4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

~~(6)~~ (5) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

~~(7)~~ (6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

~~(8)~~ (7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

~~(9)~~ (8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) Heavy equipment shall not be used or operated within the stream channel. If in-stream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities (Iowa Section 401 Water Quality Certification condition).

Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide ~~permit~~ permits or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require a preconstruction notice under nationwide permit conditions.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/16/12.