

RETURN WITH BID

Local Public Agency  
Formal Contract Proposal

PROPOSAL SUBMITTED BY		
Contractor's Name		
Street	P.O. Box	
City	State	Zip Code

STATE OF ILLINOIS  
 COUNTY OF Kendall  
Kendall County Forest Preserve  
 (Name of City, Village, Town or Road District)

FOR THE IMPROVEMENT OF  
 STREET NAME OR ROUTE NO. Millbrook Bridge Removal  
 SECTION NO. 20-01-001  
 TYPES OF FUNDS Local

SPECIFICATIONS (required)

PLANS (required)

<b>Kendall County Forest Preserve District</b> Submitted Approved/Passed
_____
Director
_____
Date

**Note:** All proposal documents, including Proposal Guaranty Checks or Proposal Bid Bonds, should be stapled together to prevent loss when bids are processed.

RETURN WITH BID

NOTICE TO BIDDERS

County Kendall
Local Public Agency Kendall County Forest Preserve
Section Number 20-01-001
Route Millbrook Bridge Removal

Sealed proposals for the improvement described below will be received at the office of Kendall County Forest Preserve
110 W. Madison St., Yorkville, IL 60560 until 10:00 AM on January 10, 2020
Address Time Date

Sealed proposals will be opened and read publicly at the office of Kendall County Forest Preserve
110 W. Madison St., Yorkville, IL 60560 at 10:15 AM on January 10, 2020
Address Time Date

DESCRIPTION OF WORK

Name Millbrook Bridge Removal Length: 750 feet ( 0.142 miles)
Location Fox Township, Kendall County, in the SW 1/4 of Section 9, Township 36 N, Range 6E, 3rd P.M.
Proposed Improvement Demolition and removal of a three span steel truss bridge over Fox River and shoreline erosion control.

- 1. Plans and proposal forms will be available on-line only at: https://www.co.kendall.il.us/call-for-bids/
2. [x] Prequalification
If checked, the 2 low bidders must file within 24 hours after the letting an "Affidavit of Availability" (Form BC 57), showing all uncompleted contracts awarded to them and all low bids pending award for Federal, State, County, Municipal and private work. One original shall be filed with the Awarding Authority.
3. The Awarding Authority reserves the right to waive technicalities and to reject any or all proposals as provided in BLRS Special Provisions for Bidding Requirements and Conditions for Contract Proposals.
4. The following BLR Forms shall be returned by the bidder to the Awarding Authority:
a. BLR 12200: Local Public Agency Formal Contract Proposal
b. BLR 12200a: Schedule of Prices
c. BLR 12230: - Proposal Bid Bond
d. BLR 12326: Affidavit of Illinois Business Office
5. The quantities appearing in the bid schedule are approximate and are prepared for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished according to the contract. The scheduled quantities of work to be done and materials to be furnished may be increased, decreased or omitted as hereinafter provided.
6. Submission of a bid shall be conclusive assurance and warranty the bidder has examined the plans and understands all requirements for the performance of work. The bidder will be responsible for all errors in the proposal resulting from failure or neglect to conduct an in depth examination. The Awarding Authority will, in no case be responsible for any costs, expenses, losses or changes in anticipated profits resulting from such failure or neglect of the bidder.
7. The bidder shall take no advantage of any error or omission in the proposal and advertised contract.
8. If a special envelope is supplied by the Awarding Authority, each proposal should be submitted in that envelope furnished by the Awarding Agency and the blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Awarding Authority is used, it shall be marked to clearly indicate its contents. When sent by mail, the sealed proposal shall be addressed to the Awarding Authority at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and at the place specified in the Notice to Bidders. Proposals received after the time specified will be returned to the bidder unopened.
9. Permission will be given to a bidder to withdraw a proposal if the bidder makes the request in writing or in person before the time for opening proposals.

RETURN WITH BID

PROPOSAL

County Kendall  
Local Public Agency Kendall County Forest Preserve  
Section Number 20-01-001  
Route Millbrook Bridge Removal

1. Proposal of \_\_\_\_\_  
\_\_\_\_\_ for the improvement of the above section by the Demolition and removal of a three span steel truss bridge over the Fox River and shoreline erosion control a total distance of 750 feet, of which a distance of 750 feet ,( 0.142 miles) are to be improved.
2. The plans for the proposed work are those prepared by Hampton, Lenzini, & Renwick, 3085 Stevenson Dr., Suite 201, Spfld, IL and approved by the Kendall County Forest Preserve on \_\_\_\_\_
3. The specifications referred to herein are those prepared by the Illinois Department of Transportation and designated as "Standard Specifications for Road and Bridge Construction" and the "Supplemental Specifications and Recurring Special Provisions" thereto, adopted and in effect on the date of invitation for bids.
4. The undersigned agrees to accept, as part of the contract, the applicable Special Provisions indicated on the "Check Sheet for Recurring Special Provisions" contained in this proposal.
5. The undersigned agrees to complete the work within 25 working days or by \_\_\_\_\_ unless additional time is granted in accordance with the specifications.
6. A proposal guaranty in the proper amount, as specified in BLRS Special Provision for Bidding Requirements and Conditions for Contract Proposals, will be required. Bid Bonds will be allowed as a proposal guaranty. Accompanying this proposal is either a bid bond if allowed, on Department form BLR12230 or a proposal guaranty check, complying with the specifications, made payable to:  
Kendall County Forest Preserve District Treasurer of Kendall  
The amount of the check is \_\_\_\_\_ ( \_\_\_\_\_ ).
7. In the event that one proposal guaranty check is intended to cover two or more proposals, the amount must be equal to the sum of the proposal guaranties, which would be required for each individual proposal. If the proposal guaranty check is placed in another proposal, it will be found in the proposal for: Section Number \_\_\_\_\_ .
8. The successful bidder at the time of execution of the contract will be required to deposit a contract bond for the full amount of the award. When a contract bond is not required, the proposal guaranty check will be held in lieu thereof. If this proposal is accepted and the undersigned fails to execute a contract and contract bond as required, it is hereby agreed that the Bid Bond or check shall be forfeited to the Awarding Authority.
9. Each pay item should have a unit price and a total price. If no total price is shown or if there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price shall govern. If a unit price is omitted, the total price will be divided by the quantity in order to establish a unit price.
10. A bid will be declared unacceptable if neither a unit price nor a total price is shown.
11. The undersigned submits herewith the schedule of prices on BLR 12200a covering the work to be performed under this contract.
12. The undersigned further agrees that if awarded the contract for the sections contained in the combinations on BLR 12200a, the work shall be in accordance with the requirements of each individual proposal for the multiple bid specified in the Schedule for Multiple Bids below.

**RETURN WITH BID**

**SCHEDULE OF PRICES**

County Kendall  
 Local Public Agency Kendall County Forest Preserve  
 Section 20-01-001  
 Route Millbrook Bridge Removal

**Schedule or Multiple Bids**

Combination Letter	Sections Included in Combinations	Total

**Schedule for Single Bid**

(For complete information covering these items, see plans and specifications)

Bidder's Proposal for making Entire Improvements

Item No.	Items	Unit	Quantity	Unit Price	Total
1	TREE REMOV 6-15	UNIT	62		
2	CHANNEL EXCAVATION	CU YD	233		
3	SEEDING CL 4 SPL	ACRE	0.1		
4	EROSION CONTR BLANKET	SQ YD	390		
5	STONE RIPRAP CL A4	TON	609		
6	FILTER FABRIC	SQ YD	638		
7	REM EXIST SUP-STR	EACH	1		
8	REM EXT SUB-STR	EACH	1		
9	COFFERDAM TYP 2 LOC 1	EACH	1		
10	COFFERDAM TYP 2 LOC 2	EACH	1		
11	TEMPORARY CAUSEWAY	L SUM	1		
12	P CUL CL D 1 66 TEMP	EACH	15		
13	TEMP EROS CONTR SEED	POUND	40		

RETURN WITH BID

CONTRACTOR CERTIFICATIONS

County	Kendall
Local Public Agency	Kendall County Forest Preserve
Section Number	20-01-001
Route	Millbrook Bridge Removal

The certifications hereinafter made by the bidder are each a material representation of fact upon which reliance is placed should the Department enter into the contract with the bidder.

1. **Debt Delinquency.** The bidder or contractor or subcontractor, respectively, certifies that it is not delinquent in the payment of any tax administered by the Department of Revenue unless the individual or other entity is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or the amount of tax. Making a false statement voids the contract and allows the Department to recover all amounts paid to the individual or entity under the contract in a civil action.

2. **Bid-Rigging or Bid Rotating.** The bidder or contractor or subcontractor, respectively, certifies that it is not barred from contracting with the Department by reason of a violation of either 720 ILCS 5/33E-3 or 720 ILCS 5/33-4.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation.

3. **Bribery.** The bidder or contractor or subcontractor, respectively, certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois or any unit of local government, nor has the firm made an admission of guilt of such conduct which is a matter of record, nor has an official, agent, or employee of the firm committed bribery or attempted bribery on behalf of the firm pursuant to the direction or authorization of a responsible official of the firm.

4. **Interim Suspension or Suspension.** The bidder or contractor or subcontractor, respectively, certifies that it is not currently under a suspension as defined in Subpart I of Title 44 Subtitle A Chapter III Part 6 of the Illinois Administrative Code. Furthermore, if suspended prior to completion of this work, the contracts executed for the completion of this work may be cancelled.

# SIGNATURES

County Kendall  
 Local Public Agency Kendall County Forest Preserve  
 Section Number 20-01-001  
 Route Millbrook Bridge Removal

(If an individual)

Signature of Bidder \_\_\_\_\_

Business Address \_\_\_\_\_

(If a partnership)

Firm Name \_\_\_\_\_

Signed By \_\_\_\_\_

Business Address \_\_\_\_\_

Insert Names and Addressed of All Partners



\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(If a corporation)

Corporate Name \_\_\_\_\_

Signed By \_\_\_\_\_

President

Business Address \_\_\_\_\_

Insert Names of Officers



President \_\_\_\_\_

Secretary \_\_\_\_\_

Treasurer \_\_\_\_\_

Attest: \_\_\_\_\_

Secretary

**Local Agency  
Proposal Bid Bond**

Route Millbrook Bridge  
County Kendall  
Local Agency Kendall Co. Forest Preserve  
Section 20-01-001

**RETURN WITH BID**

**PAPER BID BOND**

WE \_\_\_\_\_ as PRINCIPAL,  
and \_\_\_\_\_ as SURETY,

are held jointly, severally and firmly bound unto the above Local Agency (hereafter referred to as "LA") in the penal sum of 5% of the total bid price, or for the amount specified in the proposal documents in effect on the date of invitation for bids whichever is the lesser sum. We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly pay to the LA this sum under the conditions of this instrument.

WHEREAS THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that, the said PRINCIPAL is submitting a written proposal to the LA acting through its awarding authority for the construction of the work designated as the above section.

THEREFORE if the proposal is accepted and a contract awarded to the PRINCIPAL by the LA for the above designated section and the PRINCIPAL shall within fifteen (15) days after award enter into a formal contract, furnish surety guaranteeing the faithful performance of the work, and furnish evidence of the required insurance coverage, all as provided in the "Standard Specifications for Road and Bridge Construction" and applicable Supplemental Specifications, then this obligation shall become void; otherwise it shall remain in full force and effect.

IN THE EVENT the LA determines the PRINCIPAL has failed to enter into a formal contract in compliance with any requirements set forth in the preceding paragraph, then the LA acting through its awarding authority shall immediately be entitled to recover the full penal sum set out above, together with all court costs, all attorney fees, and any other expense of recovery.

IN TESTIMONY WHEREOF, the said PRINCIPAL and the said SURETY have caused this instrument to be signed by their respective officers this \_\_\_\_\_ day of \_\_\_\_\_

**Principal**

\_\_\_\_\_  
(Company Name) \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_ By: \_\_\_\_\_  
(Signature and Title) (Signature and Title)

(If PRINCIPAL is a joint venture of two or more contractors, the company names, and authorized signatures of each contractor must be affixed.)

**Surety**

\_\_\_\_\_  
(Name of Surety) By: \_\_\_\_\_  
(Signature of Attorney-in-Fact)

STATE OF ILLINOIS,  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for said county,  
do hereby certify that \_\_\_\_\_

( Insert names of individuals signing on behalf of PRINCIPAL & SURETY)

who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument on behalf of PRINCIPAL and SURETY, appeared before me this day in person and acknowledged respectively, that they signed and delivered said instruments as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_

My commission expires \_\_\_\_\_  
(Notary Public)

**ELECTRONIC BID BOND**

**Electronic bid bond is allowed (box must be checked by LA if electronic bid bond is allowed)**

The Principal may submit an electronic bid bond, in lieu of completing the above section of the Proposal Bid Bond Form. By providing an electronic bid bond ID code and signing below, the Principal is ensuring the identified electronic bid bond has been executed and the Principal and Surety are firmly bound unto the LA under the conditions of the bid bond as shown above. (If PRINCIPAL is a joint venture of two or more contractors, an electronic bid bond ID code, company/Bidder name title and date must be affixed for each contractor in the venture.)

\_\_\_\_\_

Electronic Bid Bond ID Code

\_\_\_\_\_  
(Company/Bidder Name)

\_\_\_\_\_  
(Signature and Title)

\_\_\_\_\_  
Date

RETURN WITH BID

Affidavit of Illinois Business Office

County Kendall
Local Public Agency Kendall County Forest Preserve
Section Number 20-01-001
Route Millbrook Bridge Removal

State of )
County of ) ss.

I, (Name of Affiant) of (City of Affiant), (State of Affiant),

being first duly sworn upon oath, states as follows:

- 1. That I am the officer or position of bidder.
2. That I have personal knowledge of the facts herein stated.
3. That, if selected under this proposal, (bidder), will maintain a business office in the State of Illinois which will be located in County, Illinois.
4. That this business office will serve as the primary place of employment for any persons employed in the construction contemplated by this proposal.
5. That this Affidavit is given as a requirement of state law as provided in Section 30-22(8) of the Illinois Procurement Code.

(Signature)
(Print Name of Affiant)

This instrument was acknowledged before me on day of , .

(SEAL)

(Signature of Notary Public)



# Affidavit of Availability For the Letting of \_\_\_\_\_

**Instructions:** Complete this form by either typing or using black ink. "Authorization to Bid" will not be issued unless both pages of this form are completed in detail. Use additional forms as needed to list all work.

**Part I. Work Under Contract**

List below all work you have under contract as either a prime contractor or a subcontractor. It is required to include all pending low bids not yet awarded or rejected. In a joint venture, list only that portion of the work which is the responsibility of your company. The uncompleted dollar value is to be based upon the most recent engineer's or owners estimate, and must include work subcontracted to others. If no work is contracted, show **NONE**.

	1	2	3	4	Awards Pending	
Contract Number						
Contract With						
Estimated Completion Date						
Total Contract Price						Accumulated Totals
Uncompleted Dollar Value if Firm is the Prime Contractor						
Uncompleted Dollar Value if Firm is the Subcontractor						
<b>Total Value of All Work</b>						

**Part II. Awards Pending and Uncompleted Work to be done with your own forces.**

List below the uncompleted dollar value of work for each contract and awards pending to be completed with your own forces. All work subcontracted to others will be listed on the reverse of this form. In a joint venture, list only that portion of the work to be done by your company. If no work is contracted, show **NONE**.

						Accumulated Totals
Earthwork						
Portland Cement Concrete Paving						
HMA Plant Mix						
HMA Paving						
Clean & Seal Cracks/Joints						
Aggregate Bases & Surfaces						
Highway, R.R. and Waterway Structures						
Drainage						
Electrical						
Cover and Seal Coats						
Concrete Construction						
Landscaping						
Fencing						
Guardrail						
Painting						
Signing						
Cold Milling, Planning & Rotomilling						
Demolition						
Pavement Markings (Paint)						
Other Construction (List)						
						\$ 0.00
<b>Totals</b>						

Disclosure of this information is **REQUIRED** to accomplish the statutory purpose as outlined in the "Illinois Procurement Code." Failure to comply will result in non-issuance of an "Authorization To Bid." This form has been approved by the State Forms Management Center.

**Part III. Work Subcontracted to Others.**

For each contract described in Part I, list all the work you have subcontracted to others.

	1	2	3	4	Awards Pending
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Total Uncompleted					

I, being duly sworn, do hereby declare that this affidavit is a true and correct statement relating to ALL uncompleted contracts of the undersigned for Federal, State, County, City and private work, including ALL subcontract work, ALL pending low bids not yet awarded or rejected and ALL estimated completion dates.

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Type or Print Name \_\_\_\_\_  
 Officer or Director Title

\_\_\_\_\_  
 Notary Public Signed \_\_\_\_\_

My commission expires \_\_\_\_\_

(Notary Seal)

Company \_\_\_\_\_

Address \_\_\_\_\_

INDEX  
FOR  
SUPPLEMENTAL SPECIFICATIONS  
AND RECURRING SPECIAL PROVISIONS

Adopted January 1, 2020

This index contains a listing of SUPPLEMENTAL SPECIFICATIONS, frequently used RECURRING SPECIAL PROVISIONS, and LOCAL ROADS AND STREETS RECURRING SPECIAL PROVISIONS.

ERRATA Standard Specifications for Road and Bridge Construction  
(Adopted 4-1-16) (Revised 1-1-20)

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## **SPECIAL PROVISIONS**

The following Special Provisions supplement the Illinois Department of Transportation “Standard Specifications for Road and Bridge Construction”, adopted April 1, 2016, and the Supplemental Specifications and Recurring Special Provisions, adopted January 1, 2020, which apply to and govern the construction of the Millbrook Bridge Removal, and in case of conflict with any part or parts, of said Specifications, the said Special Provisions shall take precedence and shall govern.

### **DESCRIPTION OF WORK**

The work consists of the demolition and removal of a three span steel truss bridge over the Fox River. The bridge abutments will remain in place. The work will also include temporary cofferdams, temporary causeway, stone riprap shoreline protection and permanent seeding.

### **LOCATION**

The project site is located in Fox Township, Kendall County, in the SW ¼ of Section 9, Township 36 N, Range 6E, 3<sup>rd</sup> P.M. The existing bridge is located over the Fox River, west of the Village of Millbrook, approximately 200 feet upstream of Whitfield Road.

### **DEPARTMENT DEFINITION**

The Kendall County Forest Preserve is the awarding authority and is the “Department” under Section 101.14 of the Standard Specifications.

### **PREQUALIFICATION OF BIDDERS**

Prequalification of bidders in accordance with Section 102.01 of the Standard Specifications shall be required of all bidders on this proposal. The primary Contractor will be required to meet the following prequalification code for the discipline of work to be completed:

09C-Structures(Waterway)

All Subcontractors will be required to meet the prequalification code for the discipline of work they will be responsible for completing.

### **FIELD MEASUREMENTS**

It shall be the Contractor’s full responsibility to verify all dimensions, conditions, materials, and details before ordering materials. The Contractor shall verify the dimensions shown on the plans with those actually existing on the structure to determine if any discrepancies exist. Any discrepancies discovered by the Contractor shall be immediately reported to the Engineer in writing for revisions to plans and/or details as required.

No additional compensation will be allowed to the Contractor for complying with the above requirements. Any revisions to dimensions or details resulting from the required field verifications or for any delays due to required revisions shall be approved by the Engineer.

## **JOINT UTILITY LOCATING INFORMATION FOR EXCAVATORS**

The Contractor's attention is directed to the fact that there exists within the State of Illinois a Joint Utility Locating Information for Excavators (J.U.L.I.E.) System. Many utility companies and municipalities which have gas mains and a number of others are a part of this system.

Instead of the Contractor notifying each individual utility owner that he will be working within the area, it will only be necessary to call the number of the Joint Utility Locating Information for Excavators System which is (800)892-0123 and they will notify all utility companies involved that their respective utility should be located. A minimum of forty-eight hours advance notice is required and the political name of the township where the work is located, along with other location information such as land section and quarter section will have to be given.

## **PRECAUTIONS FOR UTILITIES**

The Contractor shall take whatever precautions which may be necessary to protect the property of the various public utilities which may be located underground or above ground, at or adjacent to the site of this improvement. The Contractor will be required to repair or replace at his own expense, or bear the cost, to repair or replace, any public utility property which has been damaged through negligence. The procedure and specifications of repair will be in accordance with the regulations and/or policy of the utility

## **PREVAILING WAGES**

This contract calls for the construction of a "public work" within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 et. seq. ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus fringe benefits) in the county where the work is performed. The Illinois Department of Labor ("Department") publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates and the Contractor and subcontractors have an obligation to check the Department's website for prevailing wage rates. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, including, but not limited to, all wage requirements and notice and record keeping duties.

## **DRUG FREE WORKPLACE**

Contractor and its consultants, employees, contractors, subcontractors and agents agree to comply with all provisions of the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 et. seq. and the Illinois Drug Free Workplace Act, 30 ILCS 580/1.

## **PUBLIC CONSTRUCTION BOND**

If the total cost of the public work to be performed by the Contractor exceeds \$50,000.00, the Contractor must furnish, supply and deliver a payment bond for the full amount of the award to Kendall County Forest Preserve District pursuant to the requirements of the Public Construction Bond Act, 30 ILCS 550/1 et. seq.

## **EMPLOYMENT OF ILLINOIS WORKERS ON PUBLIC WORKS ACT**

If at the time the contract is executed, or if during the term of the contract, there is a period of excessive unemployment in Illinois as defined in the Employer of Illinois Workers on Public Works act, 30 ILCS 570/0.01 et. seq., (hereinafter referred to as "the Act"), the Contractor, its consultants, contractors, subcontractors and agents agree to employ Illinois laborers on this Project in accordance with the Act. The Contractor understands that the Act defines (a) "period of excessive unemployment" as "any month following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employer and unemployment figures", and (b) "Illinois laborer" as "any person who has resided in Illinois for at least thirty (30) days and intends to become or remain an Illinois resident." See 30 ILCS 570/1. The Contractor understands and agrees that its failure to comply with this provision of the Agreement may result in immediate termination of the Agreement.

## **MATERIAL SAFETY DATA SHEETS**

When applicable, the Contractor shall furnish Material Safety Data Sheets for their products, in compliance with the Illinois Toxic Substances Disclosure to Employee Act, Safety Inspection and Education Act & "Right to Know" law, 820 ILCS 255/1 et. seq., 820 ILCS 220/0.01 et. seq. and 820 ILCS 225/0.1 et. seq.

## **PROGRESS SCHEDULE**

The Contractor shall provide to the Engineer prior to the start of work a detailed schedule of planned construction related tasks and locations. The Contractor shall maintain throughout the course of the project, and provide at the Engineer's request, a progress schedule of construction related tasks and locations.

Work may not be completed during the months of April through June to comply with the IDNR Incidental Take Authorization.

## **COMPLETION DATE**

After beginning construction, the Contractor shall complete the work within 25 working days. The duration of in-stream work shall not exceed 4 weeks. All work on this contract shall be completed by October 31, 2020.



**UTILITIES**

Add the following after the first paragraph of Article 105.07 of the Standard Specifications:

Underground utilities have been plotted from available surveys and records and, therefore, their locations must be considered approximate only. There also may be utilities for which the locations are unknown. Verification of locations of underground utilities, shown or not shown, will be the responsibility of the Contractor. The following utility companies may have facilities within the project limits:

Name and Address of Utility	Type	Locations	Estimated Date Adjustment Completed
AT&T Legal Mandate Engineering 1000 Commerce Drive, Floor 1 Oak Brook, IL 60523	Telephone		
ComEd Public Relocation Department One Lincoln Center, Suite 600 Oakbrook Terrace, IL	Overhead Electric	Along Valley Drive South of Canoe Launch	Not Required
Ameren IP #6 Executive Drive Collinsville, IL 62234	Overhead Electric	East bank from Dobson Lane to Whitfield Road	Not Required

**REMOVAL OF EXISTING STRUCTURES**

**Description.** This work shall be performed in accordance with Section 501 of the Standard Specifications and as described herein.

The Contractor shall remove the three existing steel superstructures and timber decks. The existing abutments shall remain in place.

The Contractor shall also remove the two substructure piers. The piers must be completely removed below the channel flowline to elevation 543.0 feet. Excavation required to remove the piers will not be measured separately for payment.

The best information available depicting the existing structure dimensions is shown on the plans. This information is intended only as guide to the Contractor and cannot be considered complete information on the existing structure limits.

**Basis of Payment.** Removal of the superstructure and deck shall be included in the contract unit price EACH for REMOVAL OF EXISTING SUPERSTRUCTURES. Removal of the piers shall be included in the contract unit price EACH for REMOVAL OF EXISTING SUBSTRUCTURE. The price shall include all labor, materials, and equipment needed to complete the work.

#### **STONE RIPRAP, CLASS A4**

**Description.** Work shall be in accordance with Section 281 and 282 of the Standard Specifications and the following special provisions. This work shall consist of furnishing, transporting and placing a protective course of stone laid as riprap at locations as shown on the plans and as directed by the Engineer. The riprap shall be a minimum of 16 inches thick. Bedding material shall be a minimum of 6 inches thick. Filter fabric will be required.

**Quality.** The material used for riprap shall be stone conforming to Quality Designation A of Article 1005.01(b) of the Standard Specifications.

**Construction Method.** Foundation preparation and placing shall be done in accordance with Articles 281.03 and 281.04 of the Standard Specifications and as shown on the plans. The Contractor shall excavate the shoreline to a 1V:2H slope prior to placing the riprap. All excavated material shall be removed from the site. The layout of the erosion control protection system may be varied in the field to suit ground conditions as directed by the Engineer.

**Gradation.** The material used for riprap shall conform to Gradation Number RR4 of Article 1005.01(c) of the Standard Specifications. The material used for bedding shall conform to Gradation Number RR1 of Article 1005.01(c) of the Standard Specifications.

**Basis of Payment:** This work shall be paid for at the contract unit price per TON for STONE RIPRAP, CLASS A4. Filter fabric shall be paid for at the contract unit price per SQ YD for FILTER FABRIC. Shoreline excavation shall be paid for at the contract unit price per CU YD for CHANNEL EXCAVATION.

#### **SEEDING CLASS 4 (SPECIAL)**

**Description.** The work shall consist of stabilizing all disturbed earth surfaces with seed and erosion control blanket. This work shall be done in accordance with Section 250 and 251 of the Standard Specifications and the following provisions.

**Materials.** Seeding mixture shall be according to the seeding mixture table included in the contract plans. Fertilizer will not be required.

**Construction Requirements.** Areas to be seeded consist of all disturbed earth surfaces as directed by the Engineer. Erosion control blanket shall be placed on all seeding areas.

**Basis of Payment:** This work shall be paid for at the contract unit price per ACRE for SEEDING, CLASS 4 (SPECIAL). Erosion Control blanket shall be paid for at the contract unit price per SQUARE YARD for EROSION CONTROL BLANKET.

#### **TEMPORARY EROSION CONTROL SEEDING (SPECIAL)**

**Description.** The work shall consist of covering all disturbed earth areas with temporarily seeding and temporary mulch in accordance with Section 280 of the Standard Specifications and the following provisions. Areas to be seeded consist of all disturbed earth surfaces on which construction will be stopped for more than 14 days or as directed by the Engineer.

**Basis of Payment:** This work shall be paid for at the contract unit price per POUND for TEMPORARY EROSION CONTROL SEEDING (SPECIAL). Temporary mulch shall not be measured separately for payment but shall be included in the cost of temporary seeding.

### **TEMPORARY CAUSEWAY**

**Description.** This work shall consist of the construction of a temporary access causeway in the river as shown in the plans.

**Construction Requirements.** This work shall conform to Sections 202 and 402 of the Standard Specifications and this special provision. The causeway shall be constructed in accordance with the typical section and to the lines, elevations, and grades as shown in the plans. The Contractor shall determine the depth of coarse aggregate needed for the equipment.

The causeway layout shall provide for conveyance of the low flow rate of 1700 cfs at all times. The culvert layout on the plans is provided for the convenience of the Contractor, but the means of maintaining flows are the responsibility of the Contractor. The Contractor shall provide an in-stream work plan to the Engineer prior to the start of work.

If the Contractor proposes to construct temporary works not covered by existing permits, the Contractor shall be responsible for the coordination and expense of revising all applicable permits.

Any repairs needed to the causeway during construction shall be included in the cost of this item. All material used for the causeway shall be removed at the completion of the project, and the area restored to pre-construction grades.

**Basis of payment.** This item will be at the contract LUMP SUM price for TEMPORARY CAUSEWAY and shall include all labor, equipment, and materials necessary to construct, maintain, and remove the causeway. Pipe culverts will be paid for at the contract unit price each for PIPE CULVERTS, CLASS D, TYPE 1, 54" (TEMPORARY).

### **PIPE CULVERTS (TEMPORARY)**

**Description.** The work shall consist of furnishing, placing, maintaining, and removing pipe culverts for temporary drainage in the causeway. The work shall be completed according to article 542 of the Standard Specifications except that the work shall be paid for at the contract unit price each for PIPE CULVERTS, CLASS D, TYPE 1 54" (TEMPORARY).

### **USACE AND IDNR PERMITS**

The US Army Corps of Engineers (USACE) and the Illinois Department of Natural Resources (IDNR) have issued permits for the construction shown on the contract plans. The Contractor shall adhere to all requirements and conditions of these permits. The cost of complying with these permits will not be paid for separately but shall be included in the cost of the contract.

If Contractor plans to undertake construction activities not covered by the current permits, the Contractor shall obtain the necessary permit at the Contractor's expense and present it to the Engineer prior to starting the work, and shall not hinder the overall project schedule.

## KENDALL COUNTY CONTRACT PROVISIONS

The following must be added to any contract entered into between the Kendall County Forest Preserve District and the Contractor who is the successful bidder hereunder.

### A. General Provisions.

1. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act, as amended (50 ILCS 505/1 et. seq.).
2. Remedies. In any action with respect to this Agreement, the parties are free to pursue any legal remedies at law or in equity. If the Kendall County Forest Preserve District is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Agreement, and by reason thereof, Kendall County Forest Preserve District is required to use the services of an attorney, then Kendall County Forest Preserve District shall be entitled to reasonable attorney's fees and court costs, expenses, expert witnesses and fees incurred by Kendall County pertaining thereto and in enforcement of any remedy, including costs and fees to any appeal.
3. Indemnification. Contractor shall indemnify, hold harmless and defend counsel of Kendall County Forest Preserve District's own choosing, Kendall County Forest Preserve District, its past, present and future elected officials, department heads, employers, insurers and agents (hereinafter collectively referred to as "Releasees") from and against all liability, claims, suits, causes of action, demands, proceedings, set-offs, liens, attachments, debts, expenses, judgments, or other liabilities including costs, reasonable fees and expenses of defense, arising from any loss, damage, injury, death, loss or damage to property, of whatsoever kind or nature as well as for any breach of any covenant in this Contract or ancillary documents and any breach by the Contractor of representations or warranties made within contract documents (collectively, the "Claims"), to the extent such Claims result from any act or omission, neglect, willful acts, errors, or misconduct of the Contractor in its performance under this Agreement. Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this Section of the Contract unless the attorney has been approved in writing by the Kendall County State's Attorney. Releasees' participation in its defense shall not remove the Contractor's duty to indemnify, defend and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et. seq.) by reason of this indemnification provision. Indemnification shall survive termination of this Agreement. Pursuant to the Construction Contract Indemnification for Negligence Act (740 ILCS 35), the Parties shall not indemnify the other for any liabilities, damages, costs or expenses resulting from the other party's own willful misconduct or negligence.
4. Confidentiality. It is understood and agreed to by the parties that all contracts entered into by a government body, such as Kendall County Forest Preserve District, are open to public review and as such will be on file with the Director of the Kendall County Forest Preserve District and may be discussed in open session pursuant to the Illinois Open Meetings Act (5 ILCS 120/1 et. seq.) and/or may be released pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et. seq.).
5. Non-Discrimination. The Contractor, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the American with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

6. **Certification.** The Contractor certifies that The Contractor, its parent companies, subsidiaries, and affiliates are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or as a result of a violation of 820 ILCS 130/1 et. seq. (the Illinois Prevailing Wage Act). The Contractor further certifies by signing the Contract documents that The Contractor, its parent companies, subsidiaries, and affiliates have not been convicted of, or are not barred for attempting rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. Section 1, et. seq.; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that Officer's or employee's official capacity. Nor has The Contractor made an admission of guilt or such conduct that is a matter of record, nor has any official, officer, agent or employee of the Contractor been so convicted nor made such an admission.
7. **Conflict of Interest.** Both parties affirm no Kendall County officer or elected official has a direct or indirect pecuniary interest in The Contractor or this Agreement, or, if any Kendall County officer or elected official does have a direct or indirect pecuniary interest in The Contractor or this Agreement, that interest, and the procedure followed to effectuate this Agreement has and will comply with 50 ILCS 105/3.

B. **Insurance.**

1. All coverage shall be placed with insurers authorized to conduct business in Illinois with a current A.M. Best's rating of no less than A:VII. Each insurance policy shall not be cancelled or changed without thirty (30) calendar days prior written notice, given by the insurance carrier to Kendall County Forest Preserve District at the address set forth herein.
2. **Minimum Scope and Limit of Insurance.** All coverage shall be at least as broad as the following:
  - A. **Commercial General Liability ("CGL"):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separating to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be \$2,000,000.
  - B. **Umbrella/Excess Liability:** Limits of liability equal to or greater than \$5,000,000 per occurrence and \$5,000,000 in aggregate.
  - C. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit of no less than \$1,000,000 per accident for bodily injury and property damage.
  - D. **Worker's Compensation Insurance.** Insurance as required by the State of Illinois, with Statutory Limits, and Employer's Liability Insurance with no less than \$1,000,000 per accident for bodily injury or disease.
  - E. **Professional Liability (Errors and Omissions) Insurance.** Professional insurance appropriate to Company's profession, with limit no less than \$2,000,000 per occurrence or claim and \$2,000,000 aggregate. Kendall County Forest Preserve District shall be entitled to any broader coverage and/or higher limits maintained by Company than stated above. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Kendall County Forest Preserve District.

- F. Additional Insured Status:** Kendall County Forest Preserve District and its past, present and future officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
- G. Primary Coverage:** For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 with respect to Kendall County Forest Preserve District, its past, present and future officers, officials, employees and volunteers. Any insurance maintained by Kendall County Forest Preserve District, its past, present and future officers, officials, employees or volunteers shall be excess of the Contractor's insurance and not contribute to it.
- H. Waiver of Subrogation.** Contractor hereby grants to Kendall County Forest Preserve District and its past, present and future officers, officials, employees and volunteers a waiver of any right to subrogation which any insurer of said Contractor may acquire against Kendall County Forest Preserve District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Kendall County Forest Preserve District has received a waiver of subrogation endorsement from the insurer.
- I. Self-Insured Retentions.** Self-insured retentions must be declared to and approved by Kendall County Forest Preserve District. Kendall County Forest Preserve District may require the Contractor at any time upon request to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall at all times provide or be endorsed to provide that the self-insured retention may be satisfied by either the named insured or Kendall County Forest Preserve District.
- J. Claims Made Policies.** If any of the policies required of the Contractor provide coverage on a claims-made basis, (1) the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work, (2) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work, and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- K. Verification of Coverage.** Contractor shall furnish Kendall County Forest Preserve District with original Certificates of Insurance including all required amendatory endorsements (or copies of applicable policy language effecting coverage required by this clause) and a cop of the Declarations and Endorsements Page of the CGL policy listing all policy endorsements to Kendall County Forest Preserve District before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Kendall County Forest Preserve District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- L. Subcontractors.** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and the Contractor shall

ensure that Kendall County Forest Preserve District is an additional insured on insurance required from subcontractors.

- M. Special Risk or Circumstances.** Kendall County Forest Preserve District reserves the right to modify these requirements, including limits, based upon the nature of the risk, prior experience, insurer, coverage or other special circumstances.

**ADDITIONAL TERMS:**

**Compliance with State and Federal Laws.** Company agrees to comply with all applicable federal, state and local laws and regulatory requirements and to secure such licenses as may be required for its employees and to conduct business in the state, municipality, county and location. Such obligation includes but it is not limited to environmental laws, civil rights laws, prevailing wage and labor laws.

**Notice.** Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by fax, certified mail return receipt requested or courier service and received, in the case of notice to Kendall County Forest Preserve District, Attn: David Guritz, 110 W. Madison Street, Yorkville, Illinois 60560, fax at 630-553-4023 with a copy sent to: Kendall County State's Attorney, 807 W. John Street, Yorkville, Illinois 60560, fax at 630-553-4204. Notice to Company shall be as follows:

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**Entire Agreement.** This Agreement represents the entire Agreement between the parties and there are not other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties and may not be modified except in writing acknowledged by both parties.

**Counterparts.** This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be original and both of which shall constitute one and the same agreement.

**Authority to Execute Agreement.** The Kendall County Forest Preserve District and the Contractor each warrant and represent that their respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

**Choice of Law and Venue.** This Agreement shall be construed in accordance with the law and the Constitution of the State of Illinois and if any provision is invalid for any reason such invalidations shall not render invalid other provisions which can be given effect without the invalid provision. The parties agree that the venue for any legal proceedings between them shall be the Circuit Court of Kendall County, Illinois, Twenty-Third Judicial Circuit, State of Illinois.

**Termination.** This Agreement may be terminated by Kendall County Forest Preserve District upon written notice delivered to the Contractor at least thirty (30) calendar days prior to the effective date of termination. No additional payments, penalties and/or early termination charges shall be required upon termination of the Agreement. Kendall County Forest Preserve District shall reimburse the Company for any services completed and any services partially completed prior to the termination date. Upon receipt of a termination notice, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize

the costs associated with termination of services. Kendall County Forest Preserve District shall not be responsible for those costs and expenses resulting from the Contractor's failure to mitigate such loss. Further, Kendall County Forest Preserve District shall not be responsible for salaries, overhead and fees accrued after the Agreement's termination. Kendall County Forest Preserve District shall not be liable for any additional payments, penalties and/or early termination charges.

**Assignment.** Neither party shall assign, sublet, sell or transfer its interest in this Agreement without the prior written consent of the other.

**Force Majeure.** Neither party will be responsible to the other for damages, loss, injury or interruption of work if the damage, loss, injury or interruption of work is caused solely by conditions that are beyond the reasonable control of the parties, and without the intentional misconduct or negligence of that party (hereinafter referred to as a "force majeure event"). To the extent not within the control of either party, such force majeure events include: acts of God, acts of any governmental authorities, fire, explosions or other casualties, vandalism, and riots of war. A party claiming a force majeure event ("the claiming party") shall promptly notify the other party in writing, describing the nature and estimated duration of the claiming party's inability to perform due to the force majeure event. The cause of such inability to perform will be remedied by the claiming party with all reasonable dispatch.

**Waiver.** Kendall County Forest Preserve District and/or the Contractor's waiver of any term, condition or covenant or breach of any term, condition or covenant shall not constitute a waiver of any other term, condition, covenant or breach thereof.

**Independent Contractor Relationship.** It is understood and agreed that the Contractor is an independent contractor and is not an employee, partner, agent or in a joint venture with the Kendall County Forest Preserve District. Contractor understands and agrees that the Contractor is solely responsible for paying all wages, benefits, and any other compensation due and owing to the Contractor's officers, employees, and agents for the performance of services set forth in this Agreement. Contractor further understands and agrees that the Contractor is solely responsible for making all required payroll deductions and other tax and wage withholdings pursuant to state and federal law for the Contractor's officers, employees and/or agents who perform services as set forth in this Agreement. Contractor also acknowledges its obligation to obtain appropriate insurance coverage for the benefit of the Contractor, the Contractor's officers, employees and agents and agrees that Kendall County Forest Preserve District is not responsible for providing any insurance coverage for the benefit of the Contractor, the Contractor's officers, employers and agents. Contractor hereby agrees to defend with counsel of Kendall County Forest Preserve Districts own choosing, indemnify and waive any right to recover alleged damages, penalties, interest, fees (including attorney's fees) and/or costs from Kendall County Forest Preserve District, its past, present and future board members, elected officials, employees, insurers, and agents for any alleged injuries that Company, its officers, employees and/or agents may sustain while performing services under the Agreement.

**Background Checks/Security.** Contractor shall exercise general and overall control of its officers, employers and/or agents. Company agrees that no one shall be assigned to perform the work at Kendall County Forest Preserve's facilities on behalf of the Contractor, the Contractor's consultants, subcontractors and their respective officers, employees, agents and assigns unless the Contractor has completed a criminal background investigation for each individual to be performing work at the site. In the event that the individual's criminal



background investigation reveals that the individual has a conviction record that has not been sealed, expunged or impounded under Section 5.2 of the Criminal Identification Act, the Contractor agrees that the individual shall not be assigned to perform work on or at Kendall County's facilities absent prior written consent from Kendall County Forest Preserve District. Kendall County, at any time, for any reason and in Kendall County Forest Preserve's sole discretion, may require Company and/or the Contractor's consultants, and/or subcontractors to remove any individual from performing further work under this Agreement.

**Protection of Work and Clean-Up.** The Contractor shall be responsible for the protection of all work (including, but not limited to, all work performed by the Contractor and its subcontractors, employees and agents until its completion and final acceptance by KENDALL COUNTY FOREST PRESERVE DISTRICT. The Contractor shall, at its own expense, replace all damaged or lost materials or repair damaged parts of the work, and the Contractor should be liable therefore. The Contractor and its subcontractors, employees and agents shall take all risks from floods and casualties, and shall make no claim for damages for delay from such causes. The Contractor may, however, be allowed a reasonable extension of time on account of such delays subject to the conditions herein before specified and subject to approval by a majority voice of the KENDALL COUNTY FOREST PRESERVE DISTRICT BOARD members present for said vote. The Contractor shall remove from the vicinity of the work upon its completion all surplus material or equipment belonging to the Contractor, its subcontractors, employees and agents or used under their direction during construction. The Contractor shall remove all surplus materials, excavation, concrete and debris of all kinds from the project site, streets or portions of buildings or property at or adjacent to the site of the work, except that which may be required for refilling or grading the surface, within a reasonable time or as directed by KENDALL COUNTY FOREST PRESERVE DISTRICT.

**Notification of Public & Private Utilities.** The Contractor shall notify J.U.L.I.E. for public utility locations and KENDALL COUNTY for KENDALL COUNTY'S private utilities at least 48 hours prior to commencement of construction so that they may locate and stake out such buried services. Any services or utilities so damaged by the Contractor, its subcontractors, employers and/or agents shall be replaced and/or repaired at the Contractor's sole expense.

**Warranties.** Contractor warrants to owner that all construction and related services provided shall be performed in a good and workmanlike manner, in accordance with the terms of the contract documents, and all applicable laws, codes, regulations and other requirements, including safety standards.

**Waiver of Lien.** Contractor hereby waives any claim of lien against subject premises on behalf of the Contractor, its officers, insurers, employees, agents, suppliers and/or subcontractors employed by this Agreement. Upon completion of the project and as a condition prior to payment in full, the Contractor shall tender to KENDALL COUNTY FOREST PRESERVED DISTRICT final waiver(s) of lien for all subcontractors and/or suppliers.

**Change Orders.** Public works change orders that total more than 50% or more of original contract price must be rebid in the same manner as the original contract pursuant to 55 ILCS 525/5. Change orders of more than \$10,000.00 or 30 days (more or less) in completion time, must be pre- approved by the KENDALL COUNTY FOREST PRESERVE DISTRICT pursuant to 720 ILCS 5/33E-9.

**Kotecki Waiver.** Contractor (and any subcontractor into whose subcontract this clause shall be and is incorporated) agrees to assume the entire liability for all personal injury claims

suffered by its own employees, asserted by persons alleged injured on the Project; waives any limitation of liability defense based upon Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless KENDALL COUNTY, KENDALL COUNTY FOREST PRESERVE DISTRICT, and its past, present and future board members, elected officials, employees, agents and consultations (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorney's fees, that the Indemnities may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. Ideminities are designated and recognized as explicit third-party beneficiaries of the Kotecki waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

**Non-Appropriation.** In the event Kendall County Forest Preserve District is in default under this Agreement because funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all or part of the Kendall County Forest Preserve's obligations under this Agreement during said fiscal period, the Kendall County Forest Preserve District agrees to provide prompt written notice of said occurrence to the Contractor. In the event of a default due to non-appropriation of funds, either party has the right to terminate the Agreement upon providing thirty (30) days written notice to the other party. No additional payments, penalties and/or early termination charges shall be required upon termination of the Agreement.



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, ROCK ISLAND DISTRICT  
P.O. BOX 2004 CLOCK TOWER BUILDING  
ROCK ISLAND, ILLINOIS 61204-2004

October 19, 2018

Operations Division

SUBJECT: CEMVR-OD-P-2018-0277

Mr. David Guritz  
Kendall County Forest Preserve District  
110 West Madison Street  
Yorkville, Illinois 60560

Dear Mr. Guritz:

Our office reviewed your application dated 23 February 2018, concerning the proposed bank stabilization efforts and possible pier removal from the Millbrook Bridge over the Fox River in Section 9, Township 36 North Range 6 East in Kendall County, Illinois.

Your projects are covered under Nationwide Permits No. 3 and No.13, as published in the enclosed Fact Sheet No. 8 (IL), provided you meet the In addition to permit conditions for the nationwide permits, which are also included in the Fact Sheet. The Corps has also made a determination of no effect on federally threatened and endangered species or critical habitat. The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for the decision, and the final decision.

A Special Condition has been added to this permit decision to comply with the National Historic Preservation Act. Under separate cover letter is the Memorandum of Agreement (MOA) signed by yourself, the Illinois State Historic Preservation Office (IL SHPO) and the Corps. Demolition of the bridge shall not commence until Stipulation B (3) of the MOA has been completed and the documentation accepted by the IL SHPO.

The Illinois Environmental Protection Agency (IEPA) also issued Section 401 Water Quality Certification with conditions for this nationwide permit. Please note these additional conditions included in the Fact Sheet.

This verification is valid until March 18, 2022, unless the nationwide permit is modified, reissued or revoked. It is your responsibility to remain informed of changes to the nationwide permit program. We will issue a public notice announcing any changes if and when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permits are modified or revoked, you will have twelve months from that date to complete your activity under the present terms and conditions of this nationwide permit. If your project plans change, you should contact our office for another determination.

This authorization does not eliminate the requirement that you must still acquire other applicable Federal, state, and local permits. If you have not already coordinated your project with the Illinois Department of Natural Resources – Office of Water Resources, please contact them at 217/782-3863 to determine if a floodplain development permit is required for your project. You may contact the IEPA Facility Evaluation Unit at 217/782-3362 to determine whether additional authorizations are required from the IEPA. Please send any electronic correspondence to [EPA.401.bow@illinois.gov](mailto:EPA.401.bow@illinois.gov).

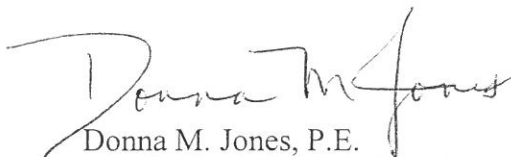


You are required to complete and return the enclosed "Completed Work Certification" upon completion of your project, in accordance with General Condition No. 30 of the nationwide permits.

The Rock Island District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete the attached postcard and return it or go to our Customer Service Survey found on our web site at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). (Be sure to select "Rock Island District" under the area entitled: Which Corps office did you deal with?)

Should you have any questions, please contact our Regulatory Branch by letter, telephone or email Mr. Brant Vollman at 309/794-5380 or [brant.j.vollman@usace.army.mil](mailto:brant.j.vollman@usace.army.mil)

Sincerely

  
Donna M. Jones, P.E.  
Chief, Illinois/Missouri Section  
Regulatory Branch

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

Enclosures

Copies Furnished:

Mr. Wes Cattoor, P.E.  
Office of Water Resources  
IL Department of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271  
[wes.cattoor@illinois.gov](mailto:wes.cattoor@illinois.gov)

Mr. Joe Frazee  
Hampton, Lenzini and Renwick, Inc.  
3085 Stevenson Drive, Suite 201  
Springfield, Illinois 62703

Mr. Darin LeCrone, P.E.  
Illinois Environmental Protection Agency  
Division of Water Pollution Control  
Permit Sec. 15  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
[epa.401.bow@illinois.gov](mailto:epa.401.bow@illinois.gov)

**COMPLETED WORK CERTIFICATION**

Permit Number: CEMVR-OD-P-2018-0277  
Name of Permittee: Mr. David Guritz, Kendall County Forest Preserve District  
Date of Issuance: October 19, 2018  
County/State: Kendall County, Illinois

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

U.S. Army Engineer District, Rock Island  
ATTN: Regulatory Branch  
Clock Tower Building  
Post Office Box 2004  
Rock Island, Illinois 61204-2004

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit, you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above reference permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

BV



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# FACT SHEET NO. 8(IL)

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US Army Corps  
of Engineers  
Rock Island District

NATIONWIDE PERMITS IN ILLINOIS

EFFECTIVE DATE: MARCH 19, 2017

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On January 6, 2017, the Corps of Engineers published in the Federal Register (82 FR 1860), the Final Rule for the Nationwide Permits Program under the Rivers and Harbors Act of 1899; the Clean Water Act; and the Marine Protection, Research and Sanctuaries Act. These Nationwide Permits became effective on March 19, 2017.

The Nationwide Permit Program is an integral part of the Corps' Regulatory Program. The Nationwide Permits are a form of general permits issued by the Chief of Engineers and are intended to apply throughout the entire United States and its territories. A listing of the nationwide permits and general conditions is included herein. We encourage prospective permit applicants to consider the advantages of nationwide permit authorization during the preliminary design of their projects. Assistance and further information regarding all aspects of the Corps of Engineers Regulatory Program may be obtained by contacting the appropriate Corps of Engineers District at the address and/or telephone number listed on the last page of this Fact Sheet.

To ensure projects authorized by a Nationwide Permit will result in minimal adverse effects to the aquatic environment, the following **Regional Conditions** were developed for projects proposed **within the state of Illinois (See NOTE regarding the Chicago District)**:

1. Stormwater management facilities shall not be located within a stream, except for NWP 21, 44, 49, or 50.
2. 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 25 feet wide from the top of bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable native species with aerial coverage of at least 50 percent shall be achieved within 3 years of establishment of the buffer strip.
3. Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.
4. For a single family residence authorized under Nationwide Permit No. 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.
5. For NWP 46, the discharge of dredged or fill material into ditches and canals that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.
6. For NWP 52, no project will be authorized within Lake Michigan. An individual permit will be required.
7. Any bank stabilization activity involving a method that protrudes from the bank contours, such as jetties, stream barbs, and/or weirs, will require a pre-construction notification in accordance with General Condition 32.
8. Mitigation shall be constructed prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States unless an alternate timeline is specifically approved in the authorization.
9. Operation of heavy equipment within the stream channel should be avoided. 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.

NOTE: The Chicago District has suspended many of the Nationwide Permits and established regional permits for work in McHenry, Kane, Lake, DuPage, Will and Cook Counties in Illinois. Information regarding Chicago District requirements can be accessed through their website at <http://www.lrc.usace.army.mil/Missions/Regulatory.aspx>. If you have any questions regarding the Chicago District program, please contact the Regulatory Office by telephone at 312/846-5530, or e-mail [lrcregweb@usace.army.mil](mailto:lrcregweb@usace.army.mil).

Permits, issued by the Corps of Engineers, under the authority of Section 404 of the Clean Water Act may not be issued until the state (where the discharge will occur) certifies, under Section 401 of the Act, that the discharge will comply with the water quality standards of the State. On February 27, 2017, the Illinois Environmental Protection Agency (IEPA) issued their final Section 401 Water Quality Certification decision.

## DENIED NATIONWIDE PERMITS

The IEPA did not issue a generic water quality certification for the following nationwide permits which are listed by subject only:

21. Surface Coal Mining Activities
23. Approved Categorical Exclusions
31. Maintenance of Existing Flood Control Facilities
34. Cranberry Production Activities
37. Emergency Watershed Protection and Rehabilitation
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

Since Nationwide Permits 21, 23, 31, 37, 48, 49, and 50 are applicable under both Section 10 and 404, the State Section 401 certification is only required for discharges of pollutants under these nationwide permits. Section 10 work not involving discharges of dredged or fill material continues to be authorized under these nationwide permits.

Authorization for discharges covered by all the above nationwide permits is denied without prejudice. Applicants wishing to conduct such discharges must first obtain either an individual water quality certification or waiver from:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
1021 NORTH GRAND AVENUE EAST  
POST OFFICE BOX 19276  
SPRINGFIELD, ILLINOIS 62794-9276

If the state certifying agency fails to act on an application for water quality certification within 60 days after receipt, the certification requirement is presumed to be waived. The applicant must furnish the District Engineer (at the appropriate address listed on the last page of the Fact Sheet) with a copy of the certification or proof of waiver. The discharge may proceed upon receipt of the District Engineer's determination that the discharge qualifies for authorization under this nationwide permit. Details of this procedure are contained in 33 CFR 330.4, a copy of which is available upon request.

Under certain circumstances, Nationwide Permits 3, 7, 8, 12, 13, 14, 17, 18, 21, 22, 23, 27, 29, 31, 33, 34, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53 and 54 require that the permittee notify the District Engineer at least 45 days prior to performing the discharge under certain circumstances. Specific instructions for these notifications are contained in General condition 32, a copy of which is included.

For all other Nationwide Permits, the IEPA issued Section 401 Water Quality Certification with conditions. General Conditions 1, 2, and 3 apply to all nationwide permits for which certification was not denied and activities require authorization under Section 404 of the Clean Water Act. Other conditions specific to a Nationwide Permit are listed at the end of the subject nationwide permit.

**General Condition 1:** An individual 401 water quality certification will be required for any activities permitted under these Nationwide Permits for discharges to waters designated by the State of Illinois as Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b).

**General Condition 2:** Projects requiring authorization under Section 404 of the Clean Water Act must implement Best Management Practices (BMPs) to protect water quality, preserve natural hydrology and minimize the overall impacts to aquatic resources during and after construction. Projects that include a discharge of pollutants to waters that have impaired water quality according to the Illinois Environmental Protection Agency's Section 303(d) list or for which there is an approved Total Maximum Daily Load (TMDL) allocation for any parameter, additional planning will be necessary to ensure that no further degradation of water quality will occur. The TMDL program information and the Agency's 303(d) list of impaired waters are available at <http://www.epa.illinois.gov/topics/water-quality/watershed-management/tmdls/index>. For waters that include an approved TMDL the applicant shall incorporate into their plans and BMPs any measures that ensure consistency with the assumptions and requirements of the TMDL within any timeframes established in the TMDL. The applicant must carefully document the justifications for all plans and BMPs, and install, implement and maintain BMPs that are consistent with all relevant pollutant load allocations and conditions in the TMDL implementation plan. If a TMDL has not yet been approved to address water quality impairments that are documented in the Agency's 303(d)

**General Condition 3:** Prior to proceeding with any work in accordance with any Nationwide Permit, potential impacts to threatened or endangered species shall be identified through use of the State's Ecological Compliance Assessment Tool (EcoCAT) at <http://dnrecocat.state.il.us/ecopublic/>. If potential impacts to State threatened or endangered species are identified, the Illinois Department of Natural Resources shall be consulted with.

### **Nationwide Permits and Conditions**

The following is a list of the nationwide permits, authorized by the Chief of Engineers, and published in the Federal Register (82 FR 1860). Permittees wishing to conduct activities under the nationwide permits must comply with the conditions published in Section C. The Nationwide

Permit General Conditions found in Section C have been reprinted at the end of this Fact Sheet. The parenthetical references (Section 10, Section 404) following each nationwide permit indicate the specific authorities under which that permit is issued.

## B. Nationwide Permits

**1. Aids to Navigation.** The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

**2. Structures in Artificial Canals.** Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Authority: Section 10)

**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, 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

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 3. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 3 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, as determined by the Illinois EPA.



3. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. The applicant for Nationwide Permit 3 shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
5. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant for Nationwide Permit 3 shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant for Nationwide Permit 3 shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
6. The applicant for Nationwide 3 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
7. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
8. The applicant for Nationwide 3 that uses temporary work pads, cofferdams, access roads and other temporary fills in order to perform work in creeks, streams, or rivers shall maintain flow in these waters by utilizing dam and pumping, fluming, culverts or other such techniques.

**4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.** Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

**5. Scientific Measurement Devices.** Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

**6. Survey Activities.** Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 6. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 6 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 6 shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
3. Material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
  - A. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;

- B. Sidecast material is not placed within ponds or other water bodies other than wetlands; and
- C. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site, or used as backfill (refer to Condition 4 and 5).
4. Backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean coarse aggregate, gravel or other material which will not cause siltation. Excavated material may be used only if:
- A. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
- B. Excavation and backfilling are done under dry conditions.
5. Backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.
6. Temporary work pads shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
7. The applicant for Nationwide Permit 6 that uses temporary work pads in order to perform work in creeks, streams, or rivers shall maintain flow in these waters by utilizing dam and pumping, fluming, culverts or other such techniques.

**7. Outfall Structures and Associated Intake Structures.** Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)  
(Authorities: Sections 10 and 404)

**8. Oil and Gas Structures on the Outer Continental Shelf.** Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps-designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 10)

**9. Structures in Fleeting and Anchorage Areas.** Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

**10. Mooring Buoys.** Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

**11. Temporary Recreational Structures.** Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

**12. Utility Line Activities.** Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project. Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any

exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities. Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line 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, 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 construction, 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.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a Section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed or installed in navigable waters of the United States (i.e., Section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a Section 404 permit (see NWP 15).

Note 6: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act Section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: For NWP 12 activities that require pre-construction notification, the PCN must include 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 that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 12. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 12 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. Case-specific water quality certification from the Illinois EPA will be required for:
  - A. activities in the following waters:
    - i. Lake Calumet
    - ii. Fox River (including the Fox Chain of Lakes)
    - iii. Lake Michigan
    - iv. Chicago Sanitary and Ship Canal
    - v. Calumet-Sag Channel
    - vi. Little Calumet River
    - vii. Grand Calumet River
    - viii. Calumet River
    - ix. Pettibone Creek (in Lake County)
    - x. South Branch of the Chicago River (including the South Fork)
    - xi. North Branch of the Chicago River (including the East and West Forks and the Skokie Lagoons)
    - xii. Chicago River (Main Stem)
    - xiii. Des Plaines River
    - xiv. Kankakee
    - xv. All Public and Food Processing Water Supplies with surface intake facilities. The Illinois EPA's Division of Public Water Supply at 217/782-1020 may be contacted for information on these water supplies.
  - B. activities in the following waters if material is sidecast into waters of the State or wetlands:
    - i. Saline River (in Hardin County)
    - ii. Richland Creek (in St. Clair and Monroe Counties)
    - iii. Rock River (in Winnebago County)
    - iv. Illinois River upstream of mile 229.6 (Illinois Route 178 bridge)
    - v. Illinois River between mile 140.0 and 182.0
    - vi. DuPage River (including the East and West Branches)
    - vii. Salt Creek (Des Plaines River Watershed)
    - viii. Waukegan River (including the South Branch)
2. Section 401 water quality certification is hereby issued for all other waters, with the following conditions:
  - A. The applicant for Nationwide Permit 12 shall not cause:
    - i. violation of applicable provisions of the Illinois Environmental Protection Act;
    - ii. water pollution defined and prohibited by the Illinois Environmental Protection Act;
    - iii. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
    - iv. interference with water use practices near public recreation areas or water supply intakes.
  - B. The applicant for Nationwide Permit 12 shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
  - C. Material resulting from trench excavation within surface waters of the State may be temporarily sidecast adjacent to the trench excavation provided that:
    - i. Sidecast material is not placed within a creek, stream, river or other flowing water body such that material dispersion could occur;
    - ii. Side cast material is not placed within ponds or other water bodies other than wetlands; and
    - iii. Sidecast material is not placed within a wetland for a period longer than twenty (20) calendar days. Such sidecast material shall either be removed from the site (refer to Condition 2.F), or used as backfill (refer to Condition 2.D and 2.E).
  - D. Backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only if:
    - i. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
    - ii. Excavation and backfilling are done under dry conditions.
  - E. Backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.

- F. All material excavated which is not being used as backfill as stipulated in Condition 2.D and 2.E shall be stored or disposed in self-contained areas with no discharge to waters of the State. Material shall be disposed of appropriately under the regulations at 35 Ill. Adm. Code Subtitle G.
- G. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant for Nationwide Permit 12 shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant for Nationwide Permit 12 shall be responsible for obtaining an NPDES Storm Water Permit required by the federal Clean Water Act prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
- H. The applicant for Nationwide Permit 12 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
- I. The use of directional drilling to install utility pipelines below surface waters of the State is hereby certified provided that:
  - i. All pits and other construction necessary for the directional drilling process are located outside of surface waters of the State;
  - ii. All drilling fluids shall be adequately contained such that they cannot cause a discharge to surface waters of the State. Such fluids shall be treated as stipulated in Condition 2.F; and
  - iii. Erosion and sediment control is provided in accordance with Conditions 2.B, 2.G, and 2.H.
- J. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Material excavated or dredged from the surface water or wetland shall not be used to construct the temporary facility. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
- K. The applicant for Nationwide Permit 12 that uses temporary work pads, cofferdams, access roads or other temporary fills in order to perform work in creeks, streams, or rivers for construction activities shall maintain flow in these waters during such construction activity by utilizing dam and pumping, fluming, culverts or other such techniques.
- L. Permanent access roads shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Material excavated or dredged from the surface water or wetland shall not be used to construct the access road in waters of the state. The applicant for Nationwide Permit 12 that constructs access roads shall maintain flow in creeks, streams and rivers by installing culverts, bridges or other such techniques.

**13. Bank Stabilization.** Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization. This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization 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, 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 construction, 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.

Invasive plant species shall not be used for bioengineering or vegetative bank stabilization.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 13. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 13 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The bank stabilization activities shall not exceed 1000 linear feet.
2. Asphalt, bituminous material and concrete with protruding material such as reinforcing bars or mesh shall not be:
  - A. used for backfill;
  - B. placed on shorelines/streambanks; or
  - C. placed in waters of the State.
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, as determined by the Illinois EPA.
4. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
5. The applicant shall consider installing bioengineering practices in lieu of structural practices of bank stabilization to minimize impacts to the lake, pond, river or stream and enhance aquatic habitat. The applicant shall document the selection process for the bank stabilization technique(s) and the basis for the selection of the bank stabilization practices. Bioengineering techniques may include, but are not limited to:
  - A. adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above;
  - B. vegetated geogrids;
  - C. coconut fiber (coir) logs;
  - D. live, woody vegetative cuttings, fascines or stumps;
  - E. brush layering; and
  - F. soil lifts.

**14. Linear Transportation Projects.** Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. 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.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include 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 that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 14. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 14 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The affected area of the stream channel shall not exceed 300 linear feet, as measured along the stream corridor.
2. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, as determined by the Illinois EPA.
3. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
5. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
6. The applicant for Nationwide Permit 14 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
7. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
8. The applicant for Nationwide Permit 14 that uses temporary work pads, cofferdams, access roads and other temporary fills in order to perform work in creeks, streams, or rivers shall maintain flow in these waters by utilizing dam and pumping, fluming, culverts or other such techniques.

**15. U.S. Coast Guard Approved Bridges.** Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899 or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 15. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 15 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2011).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

**16. Return Water From Upland Contained Disposal Areas.** Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a

section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a Section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 16. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 16 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. Applicants shall obtain a Subtitle C State Construction and Operating Permit for construction and operation of any dredge material disposal facility or upland contained disposal facility.
2. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
3. The applicant for Nationwide Permit 16 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
4. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.

**17. Hydropower Projects.** Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 17. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 17 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 17 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. An individual Section 401 water quality certification will be required for any project that is not previously approved by a Section 401 water quality certification issued by the Illinois EPA for a Federal Energy Regulatory Commission license or permit.

**18. Minor Discharges.** Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 18. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 18 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;



- B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
  3. The applicant for Nationwide Permit 18 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).

**19. Minor Dredging.** Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., Section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material 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. (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 19. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 19 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 19 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. Dredging shall be done by mechanical means and material shall not be discharged to Waters of the State.

**20. Response Operations for Oil and Hazardous Substances.** Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

**\*\*\* 21. Surface Coal Mining Activities.** Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

- (a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or as part of an integrated permit processing procedure by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;
- (b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and
- (c) The discharge is not associated with the construction of valley fills. A 'valley fill' is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

**22. Removal of Vessels.** Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See General Condition 32.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Authorities: Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

**\*\*\* 23. Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

- (a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and
- (b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: <http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

**24. Indian Tribe or State Administered Section 404 Programs.** Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(1) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

**25. Structural Discharges.** Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate Section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 25. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 25 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:

- A. violation of applicable provisions of the Illinois Environmental Protection Act;
- B. water pollution defined and prohibited by the Illinois Environmental Protection Act;

- C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 25 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
  3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.

## 26. [Reserved]

**27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of an intact aquatic habitat or riparian area of the same type that exists in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of

return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

**Reporting.** For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see General Condition 32), except for the following activities:

- (1) Activities conducted on non-federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404)

**Note:** This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

**NOTE:** THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 27. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 27 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THIS NATIONWIDE SPECIFIC CONDITION, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. All activities conducted under NWP 27 shall be in accordance with the provisions of 35 Ill. Adm. Code 405.108. Work in reclaimed surface coal mine areas are required to obtain prior authorization from the Illinois EPA for any activities that result in the use of acid-producing mine refuse.
2. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
3. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section

**28. Modifications of Existing Marinas.** Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

**29. Residential Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more

than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See General Condition 32.) (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 29. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 29 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 29 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. The applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.
6. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 29.

**30. Moist Soil Management for Wildlife.** Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

**\*\*\* 31. Maintenance of Existing Flood Control Facilities.** Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/ detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material 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. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district

engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

**Mitigation:** The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

**Emergency Situations:** In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The Pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The Pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

**Note:** If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (March 19, 2017, to March 18, 2022) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

**32. Completed Enforcement Actions.** Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

- i The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:
  - (a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;
  - (b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and
  - (c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or
- ii The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or
- iii The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and

Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 32. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 32 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
3. Except as allowed under condition 9, any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by the Illinois EPA. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. The applicant for Nationwide Permit 32 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
6. The applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.
7. Backfill used in the stream-crossing trench shall be predominantly sand or larger size material, with <20% passing a #230 U.S. sieve.
8. Any channel relocation shall be constructed under dry conditions and stabilized to prevent erosion prior to the diversion of flow.
9. Backfill used within trenches passing through surface water of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only if:
  - A. Particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using a #230 U.S. sieve; or
  - B. Excavation and backfilling are done under dry conditions.
10. Backfill used within trenches passing through wetland areas shall consist of clean material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the upper six (6) to twelve (12) inches backfilled with the topsoil obtained during trench excavation.
11. Any applicant proposing activities in a mined area or previously mined area shall provide to the IEPA a written determination regarding whether the sediment and materials that will be used are considered "acid-producing material" as defined in 35 Il. Adm. Code, Subtitle D. If considered "acid-producing material," the applicant shall obtain a permit to construct pursuant to 35 Il. Adm. Code 404.101.
12. Asphalt, bituminous material and concrete with protruding material such as reinforcing bar or mesh shall not be 1) used for backfill, 2) placed on shorelines/stream banks, or 3) placed in waters of the State.

**33. Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill

must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate Section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., Section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 33. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 33 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, as determined by the Illinois EPA.
2. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
3. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. The applicant for Nationwide Permit 33 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
6. Temporary work pads, cofferdams, access roads and other temporary fills shall be constructed of clean coarse aggregate or non-erodible non-earthen fill material that will not cause siltation. Sandbags, pre-fabricated rigid materials, sheet piling, inflatable bladders and fabric lined basins may be used for temporary facilities.
7. The applicant for Nationwide Permit 33 who uses temporary work pads, cofferdams, access roads and other temporary fills in order to perform work in creeks, streams, or rivers shall maintain flow in these waters by utilizing dam and pumping, fluming, culverts or other such techniques.
8. During dewatering of the coffered work area, all sediment-laden water shall have adequate sediment removed such that water quality standards, including preventing unnatural turbidity, are met in the receiving stream.

**\*\*\* 34. Cranberry Production Activities.** Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

**35. Maintenance Dredging of Existing Basins.** The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material 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. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

**36. Boat Ramps.** Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

- (a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50



- (b) cubic yard limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects; The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (c) The base material is crushed stone, gravel or other suitable material;
- (d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,
- (e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 36. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 36 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 36 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

**\*\*\* 37. Emergency Watershed Protection and Rehabilitation.** Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
- (d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or
- (e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the prospective permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (Authorities: Sections 10 and 404)

**38. Cleanup of Hazardous and Toxic Waste.** Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 38. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 38 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. In addition to any actions required of the NWP applicant with respect to the "Notification" General Condition 32, the applicant shall notify the Illinois EPA, Bureau of Water, of the specific activity. This notification shall include information concerning the orders and approvals that have been or will be obtained from the Illinois EPA Bureau of Land (BOL), for all cleanup activities under BOL jurisdiction or for which authorization or approval is sought from BOL for no further remedial action.
3. An individual Section 401 water quality certification will be required for activities that do not require or will not receive authorization or approval from the BOL.

**39. Commercial and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 39. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 39 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 39 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be

obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

5. The applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, water treatment plants, wastewater treatment plants and related facilities prior to construction.
6. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 39.
7. For construction of oil and gas wells, the impacted waters of the State shall be restored to pre-construction conditions within six months after construction is started. For purposes of this condition, restoration includes stabilization and seeding or planting of vegetation on the disturbed areas that were vegetated prior to construction.

**40. Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States.

The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Section 404)

Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 40. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 40 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 40 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

**41. Reshaping Existing Drainage Ditches.** Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be

approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 41. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 41 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 41 shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by the Illinois EPA. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. The applicant for Nationwide Permit 41 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
6. The applicant is advised that the following permit(s) must be obtained from the Agency: permits to construct sanitary sewers, water mains and related facilities prior to construction.
7. The proposed work shall be constructed with adequate erosion control measures (i.e., silt fences, etc.) to prevent transport of sediment and materials to the adjoining wetlands and/or streams.

**42. Recreational Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 42. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 42 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 42 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken

and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

5. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 42.

**43. Stormwater Management Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. The maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features that are not waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges into non-tidal waters of the United States for the construction of new stormwater management facilities or pollutant reduction green infrastructure features, or the expansion of existing stormwater management facilities or pollutant reduction green infrastructure features, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature. (Authority: Section 404))

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 43. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 43 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The Agency hereby issues Section 401 water quality certification of Nationwide Permit 43 exclusively for the construction and maintenance of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act. All other activities authorized under this Nationwide Permit are denied Section 401 water quality certification. For purposes of this water quality certification green infrastructure means wet weather management approaches and technologies that utilize, enhance or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration and reuse. Green infrastructure approaches currently in use include green roofs, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, porous and permeable pavements, porous piping systems, dry wells, vegetated median strips, reforestation/revegetation, rain barrels and cisterns and protection and enhancement of riparian buffers and floodplains. Material excavated, dredged or produced from the maintenance of green infrastructure features shall not be discharged to waters of the State.
2. The applicant for Nationwide Permit 43 shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
3. The applicant for Nationwide Permit 43 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
4. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
5. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The

applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

**44. Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

- (a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;
- (b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (e.g., rivers, streams, lakes, and ponds) the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and
- (c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.

The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction-notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 44. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 44 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 44 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. The facility shall be covered by either a Subtitle D NPDES mining permit or a Subtitle D State Construction and Operating Permit for mining activities.
5. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 44.

**45. Repair of Uplands Damaged by Discrete Events.** This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authority: Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands

**46. Discharges in Ditches.** Discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 46. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 46 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by the Illinois EPA. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. The applicant for Nationwide Permit 46 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
6. The applicant is advised that the following permit(s) must be obtained from the Agency: permits to construct sanitary sewers, water mains and related facilities prior to construction.
7. The proposed work shall be constructed with adequate erosion control measures (i.e., silt fences, etc.) to prevent transport of sediment and materials to the adjoining wetlands and/or streams.
8. The applicant shall not sever the connection between upstream and downstream surface waters of the State by the discharge of dredged or fill material into ditches.

**47. [Reserved]**

**\*\*\* 48. Commercial Shellfish Aquaculture Activities.** Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A "new commercial shellfish aquaculture operation" is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or

- (d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) A map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new Pre-construction notification does not need to be submitted (Authorities: Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

**\*\*\* 49. Coal Remining Activities.** Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process as part of an integrated permit processing procedure, by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

**\*\*\* 50. Underground Coal Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize coal preparation and processing activities outside of the mine site.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

**51. Land-Based Renewable Energy Generation Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind,



biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove utility lines and/or road crossings, then NWP 12 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 12 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 51. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 51 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 51 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 51.

**52. Water-Based Renewable Energy Generation Pilot Projects.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term "pilot project" means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The discharge must not cause the loss of greater than 1/2-acre of waters of the United States, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR

322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre or 300 linear foot limits.

For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.)  
(Authorities: Sections 10 and 404)

Note 1: Utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the Chief of Engineers or District Engineer under 33 U.S.C. 408.

Note 3: If the pilot project generation units, including any transmission lines, are placed in navigable waters of the United States (i.e., Section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under Section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 52. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 52 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant for Nationwide Permit 52 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.
5. An individual Section 401 water quality certification will be required for any project where the District Engineer waives the stream length limitation of NWP 52.
6. An individual Section 401 water quality certification will be required for any hydrokinetic project that is not previously approved by a Section 401 water quality certification issued by the Illinois EPA for a Federal Energy Regulatory Commission license or permit.

**53. Removal of Low-Head Dams.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term "low-head dam" is defined as a dam built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a

continual and uncontrolled basis. (During a drought, there might not be water flowing over the dam crest.) In general, a low-head dam does not have a separate spillway or spillway gates but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

The removed low-head dam structure 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.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 53. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 53 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. The applicant shall implement the following Best Management Practices and Material Testing:
  - A. Sediments and river bottom material are excavated and removed to upland areas to minimize sediment transport downstream, minimize downcutting and protect water quality; or
  - B. measures shall be implemented to minimize sediment transport downstream; or
  - C. the sediments and river bottom materials that will be transported downstream are determined to have less than 20 percent passing a #230 U.S. Sieve based on representative sampling and analysis of the sediments and river bottom materials; or
  - D. a combination of the above practices to protect water quality; and sediments and river bottom materials shall not be polluttional if released to downstream waters.
2. Best Management Practices shall be implemented to minimize sediment transport downstream, minimize downcutting of sediment and river bottom materials and protect water quality.
3. The project shall be required to obtain individual 401 water quality certification if a public or food processing surface water intake is located within the upstream pool of the dam to be removed.
4. The applicant shall notify downstream surface water supplies of the proposed dam removal. The applicant shall implement practices to prevent interference with Public and Food Processing Water Supply intakes. The Illinois EPA's Division of Public Water Supply may be contacted at 217/782-1020 for information on the Public and Food Processing Water Supplies.
5. The applicant for Nationwide Permit 53 shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
6. The applicant for Nationwide Permit 53 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
7. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
8. All areas affected by construction shall be stabilized or mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

**54. Living Shorelines.** Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural "soft" elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock

sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. The following conditions must be met:

- (a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot 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, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;
- (d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used if the site is planted by the permittee;
- (e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;
- (f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;
- (g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and
- (h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b) (4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

NOTE: THE IEPA HAS CONDITIONED SECTION 401 WATER QUALITY CERTIFICATION APPLICABLE TO NATIONWIDE PERMIT 54. DEPARTMENT OF THE ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT (33 U.S.C. 1344) UNDER NATIONWIDE PERMIT 54 WILL BE SUBJECT TO THE THREE GENERAL IEPA CONDITIONS, THESE NATIONWIDE SPECIFIC CONDITIONS, AND THE CONDITIONS PUBLISHED IN SECTION C.

1. An individual Section 401 water quality certification shall be required for any project that exceeds 1000 feet as measured along the bank and or when the District Engineer waives the limitation of 30 feet as measured from the mean high water line.
2. The applicant shall not cause:
  - A. violation of applicable provisions of the Illinois Environmental Protection Act;
  - B. water pollution defined and prohibited by the Illinois Environmental Protection Act;
  - C. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulation; or
  - D. interference with water use practices near public recreation areas or water supply intakes.
3. The applicant for Nationwide Permit 54 shall implement erosion control measures consistent with the "Illinois Urban Manual" (IEPA/USDA, NRCS; 2016).
4. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area in compliance with all state statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by this Agency. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
5. All areas affected by construction shall be stabilized or mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent erosion during construction shall be taken and may include the installation of sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of 1 (one) or more acres, total land area. An NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the Agency's Division of Water Pollution Control, Permit Section.

### C. Nationwide Permit General Conditions

To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish 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.

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 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 Fills. 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. The permittee 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 NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
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 the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.
- (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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. In cases where the non-federal applicant has identified listed species or critical habitat 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 critical habitat, or until ESA section 7 consultation 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 with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.
- (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 their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts 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) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. 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, which may include background research, consultation, oral history interviews, sample field investigation, and 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. Where the non-federal applicant has identified historic properties on which the activity might have the potential to cause effects and 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.
- (d) 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. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the

- activity authorized by this permit, you must immediately notify the district engineer of what you 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, and 52 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 in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined 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) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than 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. Restored riparian areas should consist of native species. 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)).
  - (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
  - (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 NWPs.
  - (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 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. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe 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)). 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 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 prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not 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.
  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.

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 (Transferee)  
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(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(1)(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 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 is not authorized by NWP until the appropriate Corps office issues the section 408 permission 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. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. 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) 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. For single and complete linear projects, 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. 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, intermittent, and ephemeral 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 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat 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 activity that requires 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 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 the Corps office having jurisdiction over that USACE project.
- (c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. 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 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) 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 (iv) 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 email, 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 email 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 fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP, including the need for mitigation to ensure 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 preconstruction notifications to expedite agency coordination.

#### **D. District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the

NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

#### **E. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see General condition 32).

#### **F. Definitions**

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or

predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request maybe a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Protected tribal resources:** Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or

for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b) (1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. **Single and complete non-linear project:** for non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the

gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

PCN - Pre-Construction Notification

\*\*\* Nationwide permit where Illinois Environmental Protection Agency has denied Section 401 Water Quality Certification.





# Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271  
www.dnr.illinois.gov

Bruce Rauner, Governor  
Wayne A. Rosenthal, Director

## **Authorization for Incidental Take and Implementing Agreement**

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5) and the regulations adopted to implement the Act (17 Ill. Adm. Code 1080), authorization is hereby granted to Kendall County Forest Preserve District (hereinafter referred to as KCFPD) for the incidental take of the State-endangered greater redhorse (*Moxostoma valenciennesi*) and the State-threatened river redhorse (*Moxostoma carinatum*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that the taking is incidental to activities associated with removal of the Millbrook Bridge over the Fox River in Kendall County, Illinois. The project area is also located within the Fox River Illinois Natural Areas Inventory Site (INAI #1444). The site is included on the INAI due to the presence of specific suitable habitat occupied by endangered and threatened species.

### **Procedural History**

The Department received a conservation plan prepared by KCFPD on October 11, 2017, as a request for authorization for the incidental take of greater redhorse and river redhorse. Additional information was requested by the Department on November 9, 2017, to make the conservation plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on December 6, 2017 and January 30, 2018. The final conservation plan was accepted as complete by the Department on February 1, 2018. The public notice period will be detailed under #6 of the Compliance section below.

### **Compliance with the Illinois Endangered Species Protection Act**

The Act includes six criteria that must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each are listed below.

1. The taking will not be the purpose of, but will only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to demolish and remove the steel bridge trusses of the existing Millbrook Bridge over the Fox River. The concrete and stone abutments and piers will remain in place. During instream work, temporary cofferdams and a causeway will be constructed for dewatering, sediment control, and access. The instream structures will be constructed of non-erodible material. Neither the cofferdams, nor the causeway, will extend across the entire channel to maintain stream flow. All access will be

from the west bank. The cofferdams will be constructed in two phases. The Phase 1 cofferdam will extend from the west bank around the west span. The Phase 2 cofferdam will extend from the east bank around the two east spans. During Phase 2, a temporary stone causeway will be constructed from the west bank to allow access. The causeway will be constructed with stone riprap fill with a coarse aggregate surface. Culverts will be placed through the causeway to facilitate stream flow. During each cofferdam phase, the area will be dewatered and the steel trusses will be demolished by cutting or explosive charge and removed from the coffered area. All debris, equipment, cofferdams, and causeway materials will be removed at the completion of construction. The stone riprap from the causeway will be reused along the west bank to stabilize an eroded area. The estimated duration of the work is four weeks. Total estimated area of impact for species habitat is 0.7 acres.

Take of greater redhorse and river redhorse could occur as a result of being crushed or smothered by equipment or materials used to construct the cofferdams and causeway. Either species could become trapped in the cofferdams and take could occur during the dewatering process. Siltation and sedimentation could impact the gravel channel bottom that both species use for feeding and spawning. The proposed activities may result in indirect impact as a result of noise and vibration that may cause dispersal from habitat or reduce the reproductive success of the species. The take of greater redhorse and river redhorse that could result from this project is not the purpose of KCFPD's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

Proposed minimization and mitigation measures were included in KCFPD's conservation plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by KCFPD, based on the life history needs of the greater redhorse and river redhorse.

**All required minimization and mitigation measures are presented under the Authorization section below.**

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided:

KCFPD has appropriated the necessary funds to complete the project. Estimated costs include funding for demolition, implementation of erosion and sediment control measures, and implementation of the conservation plan.

It is the Department's opinion that KCFPD's stated commitment to funding their proposed minimization and mitigation measures is sufficient to satisfy this criterion.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois:

#### **Greater Redhorse (*Moxostoma valenciennesi*)**

Greater redhorse is an Illinois state-endangered fish species.

**Habitat:** Greater redhorse is a large, bottom-feeding fish that is typically found in fast-flowing, medium to large rivers, and is occasionally found in river reservoirs and large lakes. The species prefers clear water with substrates of clean sand, gravel, or boulders. The species has little tolerance of siltation and pollution, but can withstand some level of pollution if sufficient current exists to keep spawning areas free of silt deposition.

**Reproduction:** Spawning occurs in April and May in shallow runs with sand and gravel substrates. During this time, male greater redhorses hold territories and are periodically visited by females ready to breed. Females enter spawning sites from downstream and will hold a position on or just above the substrate for 3-5 seconds. If not joined by a male, she will drift further downstream to try a different spot. After spawning occurs, eggs are buried in the substrate with their tails and no further parental care is given.

**Population:** Greater redhorse population decline has occurred because of poor water quality and habitat fragmentation.

**Range in Illinois:** In Illinois, greater redhorses have been found in the Vermilion, Kankakee, Illinois, Wabash, and Fox River basins. Greater redhorse are found in 4 of 102 Illinois counties, including DeKalb, Kane, Kendall, and Livingston. There are currently 7 extant Element Occurrence Records of greater redhorse in the Illinois Natural Heritage Database.

**Incidental Take Authorizations:** The Department has 7 previously issued or pending Incidental Take Authorizations for greater redhorse. Previous projects included a bridge replacement, pipeline installation, and hydroelectric dam projects. This is the second authorization for the taking of greater redhorse in Kendall County, the first authorization executed for this species was over 33.5 river miles upstream.

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#### **River Redhorse (*Moxostoma carinatum*)**

River redhorse is an Illinois state-threatened fish species.

**Habitat:** River redhorse is a large, bottom-feeding fish found in large clear creeks, rivers, and occasionally lakes. The species prefers deep pools with moderate current over bedrock or gravel substrates, and is intolerant of high turbidity (murky water), siltation, and pollution.

**Reproduction:** Spawning occurs between May and June. During this time, adult river redhorse migrate to shallow riffles to spawn at night. Mating takes place when two males press a single female between them, and eggs and sperm are released from the three fish. River redhorse bury their eggs in fine gravel with their tails, and no further parental care is given.

**Population:** River redhorse population decline has occurred because of poor water quality and habitat fragmentation. The presence of river redhorse in an aquatic system is considered an indicator of good water quality.

**Range in Illinois:** In Illinois, river redhorse are found in the Vermilion, Kankakee, Illinois, Des Plaines, Wabash, Fox, and Mississippi River basin. River redhorse are found in twelve (12) of 102 Illinois counties. There are currently twenty-eight (28) extant Element Occurrence Records of river redhorse in the Illinois Natural Heritage Database.

**Incidental Take Authorizations:** The Department has thirteen (13) previously issued or pending Incidental Take Authorizations for river redhorse. Previous projects included bridge replacements, a diffuser installation, hydroelectric dam construction, dam removal, railroad construction, and oil pipeline installation. Past applicants have been required to minimize instream project footprints, conduct instream work outside of fish spawning season, relocate fish trapped in cofferdams, and provide monetary support for future fish research. This is the second authorization for the taking of river redhorse in Kendall County, the first authorization executed for this species was over 33.5 river miles upstream.

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Based on the amount of habitat impacted by this project, the number of known occurrences of the threatened species in Illinois, an assessment of the potential effect of this project on the listed species in the project footprint, the conservation measures included in this authorization for incidental take, and the understanding that vulnerability and recovery information on the species remains limited; the Department has concluded that the taking proposed herein will not reduce the likelihood of survival or recovery of the greater redhorse and river redhorse in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois.

5. Any measures required under Section 5.5(b)(6) of the Act will be performed:

These measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and the signature of a representative of KCFPD indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

Public notice of KCFPD's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on February 8, 2018, and in the *Kendall County Record* on February 8, 15, 22, and March 1, 2018. A copy of the conservation plan was deposited at the Yorkville Public Library, where it was available for public review. The deadline for public comment was April 1, 2018. No comments were received from the public.

### Authorization

It is the determination of the Department that the measures that will be implemented by KCFPD will adequately minimize and mitigate the anticipated taking of greater redhorse and river redhorse incidental to activities associated with Millbrook Bridge removal over the Fox River in Kendall County, Illinois. Further, the Department has concluded that the take authorized herein will not reduce the likelihood of survival or recovery of the greater redhorse and river redhorse in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois. Additional listed species may inhabit the Fox River, **this agreement does not authorize take of any species except the greater redhorse and river redhorse.**

All terms and conditions included in the aforementioned conservation plan submitted by KCFPD to the Department are incorporated into this agreement by reference and are made a part thereof.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5] and the Administrative Rules for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following terms and conditions, which may include additions or modifications to the minimization and mitigation measures proposed by KCFPD in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **five (5) years** from the date of the Department signature, unless terminated by written agreement of both parties.

This authorization may be revoked pursuant to the Act and Ill. Adm. Code 1080.80(b) if the Department finds that KCFPD has failed to comply with any of these terms and conditions or has been responsible for the taking of the greater redhorse and river redhorse beyond that which is incidental to activities associated with the Millbrook Bridge removal over the Fox River in Kendall County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between KCFPD and the Department. The Illinois Endangered Species Protection Board shall be notified of any such alteration.

Any substantive changes, including but not limited to a change in the project footprint or a change in the State-listed species which could potentially be affected, will require that a new conservation plan be submitted to the Department to initiate the review and public notice process as required by the Act.

3. This authorization may only be transferred upon approval and written authorization by the Department.
4. Notification to all on-site personnel shall be provided on the sensitive biological resources in the area, the identification of listed species, regulations protecting the species, where the species might be found, avoidance areas, travel restrictions for equipment and vehicles, how to report sightings or incidents that may involve take, and the importance of avoiding take of the species. **KCFPD shall submit a copy of the education materials to the Department.**
5. The Department reserves the right of entry by its staff or representatives to inspect species, potential habitat, and species management practices.
6. Biological consultants employed by KCFPD shall be qualified in working with these species and hold the necessary permits for work with non-listed and listed species; these include an Illinois Department of Natural Resources (IDNR) Scientific Collection Permit as authorized under 17 Illinois Administrative Code 520, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070.
7. The salvage of non-listed aquatic life is hereby authorized by the Department with signature of this agreement per the Illinois Fish and Aquatic Life Code (515 ILCS 5/1-150).
8. Any discoveries of additional State-listed species beyond those identified in this agreement **halts work** and shall be reported to the Department within 48 hours accompanied by location information (photograph, map, and GPS coordinates).
9. KCFPD shall notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of the Millbrook Bridge removal over the Fox River. A **project status report** shall be submitted to the Department within **90 days** of project completion summarizing the implementation or status of minimization (including a list of all species relocated from within cofferdams), mitigation, and restoration measures and evaluating the effectiveness of those measures and shall include a project photo log. The report shall also include a map and GPS coordinates of any listed species found within the project footprint, description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.
10. KCFPD shall conduct, or cause to be conducted, the following pre-construction or construction efforts:

- a. Erosion and sediment control measures shall be implemented in all areas. Disturbance of vegetation shall be minimized to prevent erosion and sedimentation. All disturbed areas shall be stabilized upon completion of construction activities.
- b. Erosion and sediment control measures shall be monitored daily to ensure effectiveness.
- c. Erosion and sediment control measures shall be inspected prior to continuation of construction, after events of heavy rain.
- d. No construction debris shall be deposited into the stream channel. Excavated materials shall be removed from the channel and disposed in an upland location.
- e. Cofferdams and a causeway shall be used to facilitate construction. Work shall take place during periods of low flow to avoid failure of cofferdams and causeway.
- f. Culverts shall be placed in the temporary stone causeway to maintain stream flow.
- g. Timber mats or low ground pressure tires shall be used on construction equipment to access dewatered areas in the channel.
- h. All fish and other aquatic species shall be removed from the coffered area during dewatering and relocated to suitable habitat (fish downstream) by a permitted biologist.
- i. Work shall not occur during the spawning seasons of greater redhorse or river redhorse (April through June).

11. KCFPD shall conduct, or cause to be conducted, the following post-construction monitoring measures for greater redhorse and river redhorse during **Year 2**:

- a. A survey of the project area fish assemblage. The survey shall use IDNR protocols (two, thirty-minute runs of pulsed-DC boat electrofishing) in a reach centered on the project area. The survey shall be conducted during summer flow conditions.
- b. The survey shall be conducted outside spawning season (April through June).
- c. A report including, but not limited to, the survey methodology utilized, a map of the surveyed reach, recorded abundance of each encountered species for each thirty-minute run, an estimate of mean width and depth within the survey reach, length of the surveyed reach and a qualitative description of survey reach characteristics (e.g., flow, substrate, habitat composition). Photos (which include distinguishing characteristics) of listed species shall be included with the report.
- d. The survey report shall be provided to the Department within 90 days of completion of the survey.

12. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are calculated as follows:

- a. KCFPD shall acquire and protect in perpetuity similar riverine habitat in Little Rock Creek, a tributary to the Fox River 2.5 miles upstream. The proposed acquisition is a 135-acre property with 1.25 miles of stream corridor with habitat suitable for the greater redhorse and river redhorse, including suitable spawning substrate.

- b. Mitigation payments are nonrefundable, including events of revocation or termination. Proof of acquisition must be provided to the Department within 6 months of execution.

Mitigation values are based on the Department's best current understanding of the species life history needs and impact analysis relevant to the project site's proposed conceptual design elements available at the time of review.

13. All reports, notifications, and other project documentation shall be submitted to:

Illinois Department of Natural Resources  
Office of Resource Conservation  
Endangered Species Program – Incidental Take Authorization Coordinator  
One Natural Resource Way  
Springfield, IL 62702-1271

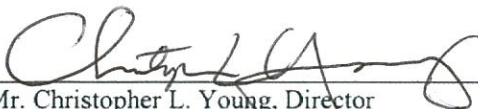
(217)557-8243

[DNR.ITAcoordinator@illinois.gov](mailto:DNR.ITAcoordinator@illinois.gov)

The Department's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Department's Natural Heritage Database.

14. The KCFPD official identified below is authorized to execute this agreement. Execution by KCFPD indicates acceptance of all terms and conditions described in this authorization.
15. The execution of this agreement does not waive or excuse the responsibilities of KCFPD to comply with other Federal, State, or local regulations, including but not limited to obtaining any required permits for the execution of this project.

*For the Illinois Department of Natural Resources:*

  
Mr. Christopher L. Young, Director  
Office of Resource Conservation

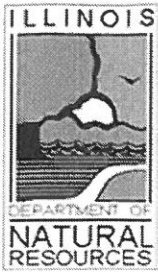
8/23/18  
Date

*For Kendall County Forest Preserve District:*

  
Mr. David Guritz, Director

8/15/2018  
Date





# Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271  
www.dnr.illinois.gov

JB Pritzker, Governor  
Colleen Callahan, Director

September 11, 2019

SUBJECT: Permit No. DS2019075  
Bridge Removal  
Fox River  
Kendall County, IL

Kendall County Forest Preserve District  
Attn: David Guritz  
110 West Madison Street  
Yorkville, IL 60560

Dear Mr. Guritz:

Enclosed is Illinois Department of Natural Resources, Office of Water Resources Permit No. DS2019075 authorizing the subject project. This approval is based on our determination that the project will neither appreciably restrict the river's flood carrying capacity nor adversely impact the public's interests in the public body of water and therefore complies with our Part 3700 Floodway Construction and Part 3704 Public Waters rules.

This permit does not supersede any other federal, state or local authorizations that may be required for the project. This permit does not grant any right or authority to prohibit or interfere with public access to or use of any portion of the public body of water.

If any changes of the permitted work are found necessary, revised plans should be submitted promptly to this office for review and approval. Also, this permit expires on the date indicated in Condition (13). If unable to complete the work by that date, the permittee may make a written request for a time extension.



Kendall County Forest Preserve District  
September 11, 2019  
Page 2

Upon receipt and review of this permit and all of its conditions, please properly execute and return the attached acceptance blank within sixty (60) days from the date of the permit. Please feel free to contact me at 217/524-1458 if you have any questions concerning this authorization.

Sincerely,



William B. Milner Jr, P.E., CFM  
Section Chief, Downstate Regulatory Programs

WBM:cjp

Enclosure

cc: Hampton, Lenzini and Renwick, Inc. (Joseph W. Frazee) ✓  
USACE, Rock Island District (Regulatory Branch: CEMVR-OD-P)  
Kendall County Planning, Building & Zoning (Brian Holdiman)





PERMIT NO. DS2019075  
DATE: September 11, 2019

**State of Illinois**  
**Department of Natural Resources, Office of Water Resources**

Permission is hereby granted to:

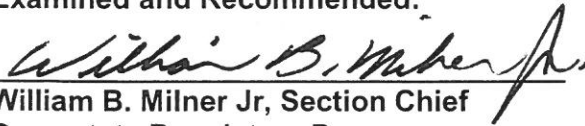
**KENDALL COUNTY FOREST PRESERVE DISTRICT**  
**110 WEST MADISON STREET**  
**YORKVILLE, ILLINOIS 60560**

to authorize the removal of the existing steel and timber bridge superstructure of the Millbrook Bridge, placement of a temporary stone causeway and cofferdam, and placement of stone rip-rap and regrading of the west bank, on the Fox River near Millbrook, IL in Section 9, Township 36 North, Range 6 East of the 3<sup>rd</sup> Principle Meridian in Kendall County,

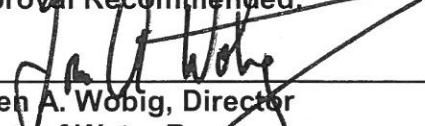
in accordance with an application dated May 15, 2019, and the plans and specifications entitled:

**KENDALL COUNTY FOREST PRESERVE**  
**MILLBROOK BRIDGE REMOVAL**  
(sheets 1 - 5 submitted with application, dated 4/25/2019).


Examined and Recommended:

  
William B. Milner Jr, Section Chief  
Downstate Regulatory Programs

Approval Recommended:

  
Loren A. Wobig, Director  
Office of Water Resources

Approved:

  
Colleen Callahan, Director  
Department of Natural Resources

This PERMIT is subject to the terms and special conditions contained herein.

**THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:**

- 1) This permit is granted in accordance with the Rivers, Lakes and Streams Act "615 ILCS 5."
- 2) This permit does not convey title to the permittee or recognize title of the permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the activity or any part thereof will be located, or otherwise grant to the permittee any right or interest in or to the property, whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.
- 3) This permit does not release the permittee from liability for damage to persons or property resulting from the work covered by this permit, and does not authorize any injury to private property or invasion of private rights.
- 4) This permit does not relieve the permittee of the responsibility to obtain other federal, state or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approvals from any federal or other state agency to do the work, this permit is not effective until the federal and state approvals are obtained. If construction does not begin within two years of the date of this permit, the permittee must submit the project to EcoCAT (<http://dnr.illinois.gov/EcoPublic/>) for an updated consultation under the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act.
- 5) The permittee shall, at the permittee's own expense, remove all temporary piling, cofferdams, false work, and material incidental to the construction of the project. If the permittee fails to remove such structures or materials, the Department may have removal made at the expense of the permittee.
- 6) In public waters, if future need for public navigation or other public interest by the state or federal government necessitates changes in any part of the structure or structures, such changes shall be made by and at the expense of the permittee or the permittee's successors as required by the Department or other properly constituted agency, within sixty (60) days from receipt of written notice of the necessity from the Department or other agency, unless a longer period of time is specifically authorized.
- 7) The execution and details of the work authorized shall be subject to the review and approval of the Department. Department personnel shall have the right of access to accomplish this purpose.
- 8) Starting work on the activity authorized will be considered full acceptance by the permittee of the terms and conditions of the permit.
- 9) The Department in issuing this permit has relied upon the statements and representations made by the permittee; if any substantive statement or representation made by the permittee is found to be false, this permit will be revoked; and when revoked, all rights of the permittee under the permit are voided.
- 10) In public waters, the permittee and the permittee's successors shall make no claim whatsoever to any interest in any accretions caused by the activity.
- 11) In issuing this permit, the Department does not ensure the adequacy of the design or structural strength of the structure or improvement.
- 12) Noncompliance with the conditions of this permit will be considered grounds for revocation.
- 13) If the construction activity permitted is not completed on or before December 31, 2022, this permit shall cease and be null and void.

The Following Local Roads And Streets Recurring Special Provisions Indicated By An "X" Are Applicable To This Contract And Are Included By Reference:

Local Roads And Streets Recurring Special Provisions

<u>Check Sheet #</u>		<u>Page No.</u>
LRS 1	<input type="checkbox"/> <b>Reserved</b>	189
LRS 2	<input type="checkbox"/> Furnished Excavation	190
LRS 3	<input type="checkbox"/> Work Zone Traffic Control Surveillance	191
LRS 4	<input type="checkbox"/> Flaggers in Work Zones	192
LRS 5	<input checked="" type="checkbox"/> Contract Claims	193
LRS 6	<input checked="" type="checkbox"/> Bidding Requirements and Conditions for Contract Proposals	194
LRS 7	<input type="checkbox"/> Bidding Requirements and Conditions for Material Proposals	200
LRS 8	<b>Reserved</b>	206
LRS 9	<input type="checkbox"/> Bituminous Surface Treatments	207
LRS 10	<b>Reserved</b>	208
LRS 11	<input checked="" type="checkbox"/> Employment Practices	209
LRS 12	<input checked="" type="checkbox"/> Wages of Employees on Public Works	211
LRS 13	<input checked="" type="checkbox"/> Selection of Labor	213
LRS 14	<input type="checkbox"/> Paving Brick and Concrete Paver Pavements and Sidewalks	214
LRS 15	<input checked="" type="checkbox"/> Partial Payments	217
LRS 16	<input checked="" type="checkbox"/> Protests on Local Lettings	218
LRS 17	<input checked="" type="checkbox"/> Substance Abuse Prevention Program	219
LRS 18	<input type="checkbox"/> Multigrade Cold Mix Asphalt	220

BDE SPECIAL PROVISIONS  
For the January 17, 2020 and March 6, 2020 Lettings

The following special provisions indicated by a "check mark" are applicable to this contract and will be included by the Project Coordination and Implementation Section of the BD&E. An \* indicates a new or revised special provision for the letting.

File Name	#		Special Provision Title	Effective	Revised
80099	1	<input type="checkbox"/>	Accessible Pedestrian Signals (APS)	April 1, 2003	Jan. 1, 2014
80274	2	<input type="checkbox"/>	Aggregate Subgrade Improvement	April 1, 2012	April 1, 2016
80192	3	<input type="checkbox"/>	Automated Flagger Assistance Device	Jan. 1, 2008	
80173	4	<input type="checkbox"/>	Bituminous Materials Cost Adjustments	Nov. 2, 2006	Aug. 1, 2017
* 80426	5	<input type="checkbox"/>	Bituminous Surface Treatment with Fog Seal	Jan. 1, 2020	
80241	6	<input type="checkbox"/>	Bridge Demolition Debris	July 1, 2009	
50261	7	<input type="checkbox"/>	Building Removal-Case I (Non-Friable and Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50481	8	<input type="checkbox"/>	Building Removal-Case II (Non-Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50491	9	<input type="checkbox"/>	Building Removal-Case III (Friable Asbestos)	Sept. 1, 1990	April 1, 2010
50531	10	<input type="checkbox"/>	Building Removal-Case IV (No Asbestos)	Sept. 1, 1990	April 1, 2010
* 80425	11	<input type="checkbox"/>	Cape Seal	Jan. 1, 2020	
80384	12	<input checked="" type="checkbox"/>	Compensable Delay Costs	June 2, 2017	April 1, 2019
80198	13	<input type="checkbox"/>	Completion Date (via calendar days)	April 1, 2008	
80199	14	<input type="checkbox"/>	Completion Date (via calendar days) Plus Working Days	April 1, 2008	
80293	15	<input type="checkbox"/>	Concrete Box Culverts with Skews > 30 Degrees and Design Fills ≤ 5 Feet	April 1, 2012	July 1, 2016
80311	16	<input type="checkbox"/>	Concrete End Sections for Pipe Culverts	Jan. 1, 2013	April 1, 2016
80277	17	<input type="checkbox"/>	Concrete Mix Design – Department Provided	Jan. 1, 2012	April 1, 2016
80261	18	<input type="checkbox"/>	Construction Air Quality – Diesel Retrofit	June 1, 2010	Nov. 1, 2014
80387	19	<input type="checkbox"/>	Contrast Preformed Plastic Pavement Marking	Nov. 1, 2017	
80029	20	<input type="checkbox"/>	Disadvantaged Business Enterprise Participation	Sept. 1, 2000	March 2, 2019
80402	21	<input checked="" type="checkbox"/>	Disposal Fees	Nov. 1, 2018	
80378	22	<input type="checkbox"/>	Dowel Bar Inserter	Jan. 1, 2017	Jan. 1, 2018
80405	23	<input type="checkbox"/>	Elastomeric Bearings	Jan. 1, 2019	
* 80421	24	<input type="checkbox"/>	Electric Service Installation	Jan. 1, 2020	
80415	25	<input type="checkbox"/>	Emulsified Asphalts	Aug. 1, 2019	
* 80423	26	<input type="checkbox"/>	Engineer's Field Office and Laboratory	Jan. 1, 2020	
80388	27	<input type="checkbox"/>	Equipment Parking and Storage	Nov. 1, 2017	
80229	28	<input type="checkbox"/>	Fuel Cost Adjustment	April 1, 2009	Aug. 1, 2017
80417	29	<input type="checkbox"/>	Geotechnical Fabric for Pipe Underdrains and French Drains	Nov. 1, 2019	
80420	30	<input type="checkbox"/>	Geotextile Retaining Walls	Nov. 1, 2019	
80304	31	<input type="checkbox"/>	Grooving for Recessed Pavement Markings	Nov. 1, 2012	Nov. 1, 2017
* 80422	32	<input type="checkbox"/>	High Tension Cable Median Barrier Reflectors	Jan. 1, 2020	
80416	33	<input type="checkbox"/>	Hot-Mix Asphalt – Binder and Surface Course	July 2, 2019	Nov. 1, 2019
80398	34	<input type="checkbox"/>	Hot-Mix Asphalt – Longitudinal Joint Sealant	Aug. 1, 2018	Nov. 1, 2019
80406	35	<input type="checkbox"/>	Hot-Mix Asphalt – Mixture Design Verification and Production (Modified for I-FIT Projects)	Jan. 1, 2019	Nov. 1, 2019
80347	36	<input type="checkbox"/>	Hot-Mix Asphalt – Pay for Performance Using Percent Within Limits – Jobsite Sampling	Nov. 1, 2014	July 2, 2019
80383	37	<input type="checkbox"/>	Hot-Mix Asphalt – Quality Control for Performance	April 1, 2017	July 2, 2019
80411	38	<input type="checkbox"/>	Luminaires, LED	April 1, 2019	
80393	39	<input type="checkbox"/>	Manholes, Valve Vaults, and Flat Slab Tops	Jan. 1, 2018	March 1, 2019
80045	40	<input type="checkbox"/>	Material Transfer Device	June 15, 1999	Aug. 1, 2014
80418	41	<input type="checkbox"/>	Mechanically Stabilized Earth Retaining Walls	Nov. 1, 2019	
* 80424	42	<input type="checkbox"/>	Micro-Surfacing and Slurry Sealing	Jan. 1, 2020	
80165	43	<input type="checkbox"/>	Moisture Cured Urethane Paint System	Nov. 1, 2006	Jan. 1, 2010
80412	44	<input type="checkbox"/>	Obstruction Warning Luminaires, LED	Aug. 1, 2019	
80349	45	<input type="checkbox"/>	Pavement Marking Blackout Tape	Nov. 1, 2014	April 1, 2016

80371	46	<input type="checkbox"/>	Pavement Marking Removal	July 1, 2016		
80389	47	<input type="checkbox"/>	Portland Cement Concrete	Nov. 1, 2017		
80359	48	<input type="checkbox"/>	Portland Cement Concrete Bridge Deck Curing	April 1, 2015	Nov. 1, 2019	
80300	49	<input type="checkbox"/>	Preformed Plastic Pavement Marking Type D - Inlaid	April 1, 2012	April 1, 2016	
80328	50	<input type="checkbox"/>	Progress Payments	Nov. 2, 2013		
34261	51	<input type="checkbox"/>	Railroad Protective Liability Insurance	Dec. 1, 1986	Jan. 1, 2006	
80157	52	<input type="checkbox"/>	Railroad Protective Liability Insurance (5 and 10)	Jan. 1, 2006		
80306	53	<input type="checkbox"/>	Reclaimed Asphalt Pavement (RAP) and Reclaimed Asphalt Shingles (RAS)	Nov. 1, 2012	July 2, 2019	
*	80407	54	<input checked="" type="checkbox"/>	Removal and Disposal of Regulated Substances	Jan. 1, 2019	Jan. 1, 2020
	80419	55	<input type="checkbox"/>	Silt Fence, Ground Stabilization and Riprap Filter Fabric	Nov. 1, 2019	
	80395	56	<input type="checkbox"/>	Sloped Metal End Section for Pipe Culverts	Jan. 1, 2018	
	80340	57	<input type="checkbox"/>	Speed Display Trailer	April 2, 2014	Jan. 1, 2017
	80127	58	<input type="checkbox"/>	Steel Cost Adjustment	April 2, 2004	Aug. 1, 2017
	80408	59	<input type="checkbox"/>	Steel Plate Beam Guardrail Manufacturing	Jan. 1, 2019	
	80413	60	<input type="checkbox"/>	Structural Timber	Aug. 1, 2019	
	80397	61	<input type="checkbox"/>	Subcontractor and DBE Payment Reporting	April 2, 2018	
	80391	62	<input checked="" type="checkbox"/>	Subcontractor Mobilization Payments	Nov. 2, 2017	April 1, 2019
	80317	63	<input type="checkbox"/>	Surface Testing of Hot-Mix Asphalt Overlays	Jan. 1, 2013	Aug. 1, 2019
	80298	64	<input type="checkbox"/>	Temporary Pavement Marking	April 1, 2012	April 1, 2017
	80403	65	<input type="checkbox"/>	Traffic Barrier Terminal, Type 1 Special	Nov. 1, 2018	
	80409	66	<input type="checkbox"/>	Traffic Control Devices - Cones	Jan. 1, 2019	
*	80410	67	<input type="checkbox"/>	Traffic Spotters	Jan. 1, 2019	
	20338	68	<input type="checkbox"/>	Training Special Provisions	Oct. 15, 1975	
	80318	69	<input type="checkbox"/>	Traversable Pipe Grate for Concrete End Sections	Jan. 1, 2013	Jan. 1, 2018
	80288	70	<input type="checkbox"/>	Warm Mix Asphalt	Jan. 1, 2012	April 1, 2016
	80302	71	<input type="checkbox"/>	Weekly DBE Trucking Reports	June 2, 2012	April 2, 2015
	80414	72	<input type="checkbox"/>	Wood Fence Sight Screen	Aug. 1, 2019	
	80071	73	<input type="checkbox"/>	Working Days	Jan. 1, 2002	

The following special provisions are in the 2020 Supplemental Specifications and Recurring Special Provisions.

<u>File Name</u>	<u>Special Provision Title</u>	<u>New Location(s)</u>	<u>Effective</u>	<u>Revised</u>
80404	Coarse Aggregate Quality for Micro-Surfacing and Cape Seals	Article 1004.01(b)	Jan. 1, 2019	
80392	Lights on Barricades	Articles 701.16, 701.17(c)(2) & 603.07	Jan. 1, 2018	
80336	Longitudinal Joint and Crack Patching	Check Sheet #36	April 1, 2014	April 1, 2016
80400	Mast Arm Assembly and Pole	Article 1077.03(b)	Aug. 1, 2018	
80394	Metal Flared End Section for Pipe Culverts	Articles 542.07(c) and 542.11	Jan. 1, 2018	April 1, 2018
80390	Payments to Subcontractors	Article 109.11	Nov. 2, 2017	April 1, 2017

The following special provisions require additional information from the designer. The additional information needs to be submitted as a separate document. The Project Coordination and Implementation section will then include the information in the applicable special provision.

- Bridge Demolition Debris
- Building Removal - Case I
- Building Removal - Case II
- Building Removal - Case III
- Building Removal-Case IV
- Completion Date
- Completion Date Plus Working Days
- DBE Participation
- Material Transfer Device
- Railroad Protective Liability Insurance
- Training Special Provisions
- Working Days

## **COMPENSABLE DELAY COSTS (BDE)**

Effective: June 2, 2017

Revised: April 1, 2019

Revise Article 107.40(b) of the Standard Specifications to read:

“(b) Compensation. Compensation will not be allowed for delays, inconveniences, or damages sustained by the Contractor from conflicts with facilities not meeting the above definition; or if a conflict with a utility in an unanticipated location does not cause a shutdown of the work or a documentable reduction in the rate of progress exceeding the limits set herein. The provisions of Article 104.03 notwithstanding, compensation for delays caused by a utility in an unanticipated location will be paid according to the provisions of this Article governing minor and major delays or reduced rate of production which are defined as follows.

- (1) Minor Delay. A minor delay occurs when the work in conflict with the utility in an unanticipated location is completely stopped for more than two hours, but not to exceed two weeks.
- (2) Major Delay. A major delay occurs when the work in conflict with the utility in an unanticipated location is completely stopped for more than two weeks.
- (3) Reduced Rate of Production Delay. A reduced rate of production delay occurs when the rate of production on the work in conflict with the utility in an unanticipated location decreases by more than 25 percent and lasts longer than seven calendar days.”

Revise Article 107.40(c) of the Standard Specifications to read:

“(c) Payment. Payment for Minor, Major, and Reduced Rate of Production Delays will be made as follows.

- (1) Minor Delay. Labor idled which cannot be used on other work will be paid for according to Article 109.04(b)(1) and (2) for the time between start of the delay and the minimum remaining hours in the work shift required by the prevailing practice in the area.

Equipment idled which cannot be used on other work, and which is authorized to standby on the project site by the Engineer, will be paid for according to Article 109.04(b)(4).

- (2) Major Delay. Labor will be the same as for a minor delay.

Equipment will be the same as for a minor delay, except Contractor-owned equipment will be limited to two weeks plus the cost of move-out to either the



Contractor's yard or another job and the cost to re-mobilize, whichever is less. Rental equipment may be paid for longer than two weeks provided the Contractor presents adequate support to the Department (including lease agreement) to show retaining equipment on the job is the most economical course to follow and in the public interest.

- (3) Reduced Rate of Production Delay. The Contractor will be compensated for the reduced productivity for labor and equipment time in excess of the 25 percent threshold for that portion of the delay in excess of seven calendar days. Determination of compensation will be in accordance with Article 104.02, except labor and material additives will not be permitted.

Payment for escalated material costs, escalated labor costs, extended project overhead, and extended traffic control will be determined according to Article 109.13."

Revise Article 108.04(b) of the Standard Specifications to read:

"(b) No working day will be charged under the following conditions.

- (1) When adverse weather prevents work on the controlling item.
- (2) When job conditions due to recent weather prevent work on the controlling item.
- (3) When conduct or lack of conduct by the Department or its consultants, representatives, officers, agents, or employees; delay by the Department in making the site available; or delay in furnishing any items required to be furnished to the Contractor by the Department prevents work on the controlling item.
- (4) When delays caused by utility or railroad adjustments prevent work on the controlling item.
- (5) When strikes, lock-outs, extraordinary delays in transportation, or inability to procure critical materials prevent work on the controlling item, as long as these delays are not due to any fault of the Contractor.
- (6) When any condition over which the Contractor has no control prevents work on the controlling item."

Revise Article 109.09(f) of the Standard Specifications to read:

"(f) Basis of Payment. After resolution of a claim in favor of the Contractor, any adjustment in time required for the work will be made according to Section 108. Any adjustment in the costs to be paid will be made for direct labor, direct materials, direct equipment, direct jobsite overhead, direct offsite overhead, and other direct costs allowed by the resolution. Adjustments in costs will not be made for interest charges, loss of anticipated profit, undocumented loss of efficiency, home office overhead and unabsorbed overhead

other than as allowed by Article 109.13, lost opportunity, preparation of claim expenses and other consequential indirect costs regardless of method of calculation.

The above Basis of Payment is an essential element of the contract and the claim cost recovery of the Contractor shall be so limited.”

Add the following to Section 109 of the Standard Specifications.

**“109.13 Payment for Contract Delay.** Compensation for escalated material costs, escalated labor costs, extended project overhead, and extended traffic control will be allowed when such costs result from a delay meeting the criteria in the following table.

Contract Type	Cause of Delay	Length of Delay
Working Days	Article 108.04(b)(3) or Article 108.04(b)(4)	No working days have been charged for two consecutive weeks.
Completion Date	Article 108.08(b)(1) or Article 108.08(b)(7)	The Contractor has been granted a minimum two week extension of contract time, according to Article 108.08.

Payment for each of the various costs will be according to the following.

- (a) Escalated Material and/or Labor Costs. When the delay causes work, which would have otherwise been completed, to be done after material and/or labor costs have increased, such increases will be paid. Payment for escalated material costs will be limited to the increased costs substantiated by documentation furnished by the Contractor. Payment for escalated labor costs will be limited to those items in Article 109.04(b)(1) and (2), except the 35 percent and 10 percent additives will not be permitted.
- (b) Extended Project Overhead. For the duration of the delay, payment for extended project overhead will be paid as follows.
  - (1) Direct Jobsite and Offsite Overhead. Payment for documented direct jobsite overhead and documented direct offsite overhead, including onsite supervisory and administrative personnel, will be allowed according to the following table.

Original Contract Amount	Supervisory and Administrative Personnel
Up to \$5,000,000	One Project Superintendent
Over \$ 5,000,000 - up to \$25,000,000	One Project Manager, One Project Superintendent or Engineer, and One Clerk
Over \$25,000,000 - up to \$50,000,000	One Project Manager, One Project Superintendent, One Engineer, and

	One Clerk
Over \$50,000,000	One Project Manager, Two Project Superintendents, One Engineer, and One Clerk

(2) Home Office and Unabsorbed Overhead. Payment for home office and unabsorbed overhead will be calculated as 8 percent of the total delay cost.

(c) Extended Traffic Control. Traffic control required for an extended period of time due to the delay will be paid for according to Article 109.04.

When an extended traffic control adjustment is paid under this provision, an adjusted unit price as provided for in Article 701.20(a) for increase or decrease in the value of work by more than ten percent will not be paid.

Upon payment for a contract delay under this provision, the Contractor shall assign subrogation rights to the Department for the Department's efforts of recovery from any other party for monies paid by the Department as a result of any claim under this provision. The Contractor shall fully cooperate with the Department in its efforts to recover from another party any money paid to the Contractor for delay damages under this provision."

## **DISPOSAL FEES (BDE)**

Effective: November 1, 2018

Replace Articles 109.04(b)(5) – 109.04(b)(8) of the Standard Specifications with the following:

- “(5) Disposal Fees. When the extra work performed includes paying for disposal fees at a clean construction and demolition debris facility, an uncontaminated soil fill operation or a landfill, the Contractor shall receive, as administrative costs, an amount equal to five percent of the first \$10,000 and one percent of any amount over \$10,000 of the total approved costs of such fees.
- (6) Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- (7) Statements. No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with itemized statements of the cost of such force account work. Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor’s stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from his/her stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

Itemized statements at the cost of force account work shall be detailed as follows.

- a. Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman. Payrolls shall be submitted to substantiate actual wages paid if so requested by the Engineer.
  - b. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
  - c. Quantities of materials, prices and extensions.
  - d. Transportation of materials.
  - e. Cost of property damage, liability and workmen’s compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (8) Work Performed by an Approved Subcontractor. When extra work is performed by an approved subcontractor, the Contractor shall receive, as administrative costs, an amount equal to five percent of the total approved costs of such work with the minimum payment being \$100.

- (9) All statements of the cost of force account work shall be furnished to the Engineer not later than 60 days after receipt of the Central Bureau of Construction form "Extra Work Daily Report". If the statement is not received within the specified time frame, all demands for payment for the extra work are waived and the Department is released from any and all such demands. It is the responsibility of the Contractor to ensure that all statements are received within the specified time regardless of the manner or method of delivery."

80402

## REMOVAL AND DISPOSAL OF REGULATED SUBSTANCES (BDE)

Effective: January 1, 2019

Revised: January 1, 2020

Revise Section 669 of the Standard Specifications to read:

### “SECTION 669. REMOVAL AND DISPOSAL OF REGULATED SUBSTANCES

**669.01 Description.** This work shall consist of the transportation and proper disposal of regulated substances. This work shall also consist of the removal, transportation, and proper disposal of underground storage tanks (UST), their contents and associated underground piping to the point where the piping is above the ground, including determining the content types and estimated quantities.

**669.02 Equipment.** The Contractor shall notify the Engineer of the delivery of all excavation, storage, and transportation equipment to a work area location. The equipment shall comply with OSHA and American Petroleum Institute (API) guidelines and shall be furnished in a clean condition. Clean condition means the equipment does not contain any residual material classified as a non-special waste, non-hazardous special waste, or hazardous waste. Residual materials include, but are not limited to, petroleum products, chemical products, sludges, or any other material present in or on equipment.

Before beginning any associated soil or groundwater management activity, the Contractor shall provide the Engineer with the opportunity to visually inspect and approve the equipment. If the equipment contains any contaminated residual material, decontamination shall be performed on the equipment as appropriate to the regulated substance and degree of contamination present according to OSHA and API guidelines. All cleaning fluids used shall be treated as the contaminant unless laboratory testing proves otherwise.

**669.03 Pre-Construction Submittals and Qualifications.** Prior to beginning this work, or working in areas with regulated substances, the Contractor shall submit a “Regulated Substances Pre-Construction Plan (RSPCP)” to the Engineer for review and approval using form BDE 2730. The form shall be signed by an Illinois licensed Professional Engineer or Professional Geologist.

As part of the RSPCP, the Contractor(s) or firm(s) performing the work shall meet the following qualifications.

- (a) Regulated Substances Monitoring. Qualification for environmental observation and field screening of regulated substances work and environmental observation of UST removal shall require either pre-qualification in Hazardous Waste by the Department or demonstration of acceptable project experience in remediation and operations for contaminated sites in accordance with applicable Federal, State, or local regulatory requirements using BDE 2730.

Qualification for each individual performing regulated substances monitoring shall require a minimum of one-year of experience in similar activities as those required for the project.

- (b) Underground Storage Tank Removal. Qualification for underground storage tank (UST) removal work shall require licensing and certification with the Office of the State Fire Marshall (OSFM) and possession of all permits required to perform the work. A copy of the permit shall be provided to the Engineer prior to tank removal.

The qualified Contractor(s) or firm(s) shall also document it does not have any current or former ties with any of the properties contained within, adjoining, or potentially affecting the work.

The Engineer will require up to 21 calendar days for review of the RSPCP. The review may involve rejection or revision and resubmittal; in which case, an additional 21 days will be required for each subsequent review. Work shall not commence until the RSPCP has been approved by the Engineer. After approval, the RSPCP shall be revised as necessary to reflect changed conditions in the field and documented using BDE 2730A "Regulated Substances Pre-Construction Plan (RSPCP) Addendum" and submitted to the Engineer for approval.

## **CONSTRUCTION REQUIREMENTS**

**669.04 Regulated Substances Monitoring.** Regulated substances monitoring includes environmental observation and field screening during regulated substances management activities at the contract specific work areas. As part of the regulated substances monitoring, the monitoring personnel shall perform and document the applicable duties listed on form BDE 2732 "Regulated Substances Monitoring Daily Record (RSMDR)".

- (a) Environmental Observation. Prior to beginning excavation, the Contractor shall mark the limits of the contract specific work areas. Once work begins, the monitoring personnel shall be present on-site continuously during the excavation and loading of material.
- (b) Field Screening. Field screening shall be performed during the excavation and loading of material from the contract specific work areas, except for material classified according to Article 669.05(b)(1) or 669.05(c) where field screening is not required.

Field screening shall be performed with either a photoionization detector (PID) (minimum 10.6eV lamp) or a flame ionization detector (FID), and other equipment as appropriate, to monitor for potential contaminants associated with regulated substances. The PID or FID shall be calibrated on-site, and background level readings taken and recorded daily, and as field and weather conditions change. Field screen readings on the PID or FID in excess of background levels indicates the potential presence of regulated substances requiring handling as a non-special waste, special waste, or hazardous waste. PID or FID readings may be used as the basis of increasing the limits of removal with the approval of the Engineer but shall in no case be used to decrease the limits.

**669.05 Regulated Substances Management and Disposal.** The management and disposal of soil and/or groundwater containing regulated substances shall be according to the following:

- (a) Soil Analytical Results Exceed Most Stringent MAC. When the soil analytical results indicate detected levels exceed the most stringent maximum allowable concentration (MAC) for chemical constituents in soil established pursuant to Subpart F of 35 Ill. Adm. Code 1100.605, the soil shall be managed as follows:
  - (1) When analytical results indicate inorganic chemical constituents exceed the most stringent MAC, but still considered within area background levels by the Engineer, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable. If the soils cannot be utilized within the right-of-way, they shall be managed and disposed of at a landfill as a non-special waste.
  - (2) When analytical results indicate inorganic chemical constituents exceed the most stringent MAC but do not exceed the MAC for a Metropolitan Statistical Area (MSA) County identified in 35 Ill. Admin. Code 742 Appendix A. Table G, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable, or managed and disposed of at a clean construction and demolition debris (CCDD) facility or an uncontaminated soil fill operation (USFO) within an MSA County provided the pH of the soil is within the range of 6.25 - 9.0, inclusive.
  - (3) When analytical results indicate chemical constituents exceed the most stringent MAC but do not exceed the MAC for an MSA County excluding Chicago, or the MAC within the Chicago corporate limits, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable, or managed and disposed of off-site at a CCDD facility or an USFO within an MSA County excluding Chicago or within the Chicago corporate limits provided the pH of the soil is within the range of 6.25 - 9.0, inclusive.
  - (4) When analytical results indicate chemical constituents exceed the most stringent MAC but do not exceed the MAC for an MSA County excluding Chicago, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable, or managed and disposed of off-site at a CCDD facility or an USFO within an MSA County excluding Chicago provided the pH of the soil is within the range of 6.25 - 9.0, inclusive.
  - (5) When the Engineer determines soil cannot be managed according to Articles 669.05(a)(1) through (a)(4) above and the materials do not contain special waste or hazardous waste, as determined by the Engineer, the soil shall be managed and disposed of at a landfill as a non-special waste.
  - (6) When analytical results indicate soil is hazardous by characteristic or listing pursuant to 35 Ill. Admin. Code 721, contains radiological constituents, or the Engineer otherwise determines the soil cannot be managed according to Articles 669.05(a)(1)



through (a)(5) above, the soil shall be managed and disposed of off-site as a special waste or hazardous waste as applicable.

(b) Soil Analytical Results Do Not Exceed Most Stringent MAC. When the soil analytical results indicate that detected levels do not exceed the most stringent MAC, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable, or managed and disposed of off-site according to Article 202.03. However, the excavated soil cannot be taken to a CCDD facility or an USFO for any of the following reasons.

(1) The pH of the soil is less than 6.25 or greater than 9.0.

(2) The soil exhibited PID or FID readings in excess of background levels.

(c) Soil Analytical Results Exceed Most Stringent MAC but Do Not Exceed Tiered Approach to Corrective Action Objectives (TACO) Residential. When the soil analytical results indicate that detected levels exceed the most stringent MAC but do not exceed TACO Tier 1 Soil Remediation Objectives for Residential Properties pursuant to 35 Ill. Admin. Code 742 Appendix B Table A, the excavated soil can be utilized within the right-of-way as embankment or fill, when suitable, or managed and disposed of off-site according to Article 202.03. However, the excavated soil cannot be taken to a CCDD facility or an USFO.

(d) Groundwater. When groundwater analytical results indicate the detected levels are above Appendix B, Table E of 35 Ill. Admin. Code 742, the most stringent Tier 1 Groundwater Remediation Objectives for Groundwater Component of the Groundwater Ingestion Route for Class 1 groundwater, the groundwater shall be managed off-site as a special waste or hazardous waste as applicable. Special waste groundwater shall be containerized and trucked to an off-site treatment facility, or may be discharged to a sanitary sewer or combined sewer when permitted by the local sewer authority. Groundwater discharged to a sanitary sewer or combined sewer shall be pre-treated to remove particulates and measured with a calibrated flow meter to comply with applicable discharge limits. A copy of the permit shall be provided to the Engineer prior to discharging groundwater to the sanitary sewer or combined sewer.

Groundwater encountered within trenches may be managed within the trench and allowed to infiltrate back into the ground. If the groundwater cannot be managed within the trench, it may be discharged to a sanitary sewer or combined sewer when permitted by the local sewer authority, or it shall be containerized and trucked to an off-site treatment facility as a special waste or hazardous waste. The Contractor is prohibited from discharging groundwater within the trench through a storm sewer. The Contractor shall install backfill plugs within the area of groundwater contamination.

One backfill plug shall be placed down gradient to the area of groundwater contamination. Backfill plugs shall be installed at intervals not to exceed 50 ft (15 m). Backfill plugs are to be 4 ft (1.2 m) long, measured parallel to the trench, full trench width and depth. Backfill plugs shall not have any fine aggregate bedding or backfill, but shall be entirely cohesive

soil or any class of concrete. The Contractor shall provide test data that the material has a permeability of less than  $10^{-7}$  cm/sec according to ASTM D 5084, Method A or per another test method approved by the Engineer.

The Contractor shall use due care when transferring contaminated material from the area of origin to the transporter. Should releases of contaminated material to the environment occur (i.e., spillage onto the ground, etc.), the Contractor shall clean-up spilled material and place in the appropriate storage containers as previously specified. Clean-up shall include, but not be limited to, sampling beneath the material staging area to determine complete removal of the spilled material.

The Contractor shall provide engineered barriers, when required, and shall include materials sufficient to completely line excavation surfaces, including sloped surfaces, bottoms, and sidewall faces, within the areas designated for protection.

The Contractor shall obtain all documentation including any permits and/or licenses required to transport the material containing regulated substances to the disposal facility. The Contractor shall coordinate with the Engineer on the completion of all documentation. The Contractor shall make all arrangements for collection and analysis of landfill acceptance testing. The Contractor shall coordinate waste disposal approvals with the disposal facility.

The Contractor shall provide the Engineer with all transport-related documentation within two days of transport or receipt of said document(s). For management of special or hazardous waste, the Contractor shall provide the Engineer with documentation that the Contractor is operating with a valid Illinois special waste transporter permit at least two weeks before transporting the first load of contaminated material.

Transportation and disposal of material classified according to Article 669.05(a)(5) or 669.05(a)(6) shall be completed each day so that none of the material remains on-site by the close of business, except when temporary staging has been approved.

Any waste generated as a special or hazardous waste from a non-fixed facility shall be manifested off-site using the Department's county generator number provided by the Bureau of Design and Environment. An authorized representative of the Department shall sign all manifests for the disposal of the contaminated material and confirm the Contractor's transported volume. Any waste generated as a non-special waste may be managed off-site without a manifest, a special waste transporter, or a generator number.

The Contractor shall select a landfill permitted for disposal of the contaminant within the State of Illinois. The Department will review and approve or reject the facility proposed by the Contractor to use as a landfill. The Contractor shall verify whether the selected disposal facility is compliant with those applicable standards as mandated by their permit and whether the disposal facility is presently, has previously been, or has never been, on the United States Environmental Protection Agency (U.S. EPA) National Priorities List or the Resource Conservation and Recovery Act (RCRA) List of Violating Facilities. The use of a Contractor selected landfill shall in no manner delay the construction schedule or alter the Contractor's responsibilities as set forth.

**669.06 Non-Special Waste Certification.** An authorized representative of the Department shall sign and date all non-special waste certifications. The Contractor shall be responsible for providing the Engineer with the required information that will allow the Engineer to certify the waste is not a special waste.

(a) Definition. A waste is considered a non-special waste as long as it is not:

- (1) a potentially infectious medical waste;
- (2) a hazardous waste as defined in 35 Ill. Admin. Code 721;
- (3) an industrial process waste or pollution control waste that contains liquids, as determined using the paint filter test set forth in subdivision (3)(A) of subsection (m) of 35 Ill. Admin. Code 811.107;
- (4) a regulated asbestos-containing waste material, as defined under the National Emission Standards for Hazardous Air Pollutants in 40 CFR Part 61.141;
- (5) a material containing polychlorinated biphenyls (PCB's) regulated pursuant to 40 CFR Part 761;
- (6) a material subject to the waste analysis and recordkeeping requirements of 35 Ill. Admin. Code 728.107 under land disposal restrictions of 35 Ill. Admin. Code 728;
- (7) a waste material generated by processing recyclable metals by shredding and required to be managed as a special waste under Section 22.29 of the Environmental Protection Act; or
- (8) an empty portable device or container in which a special or hazardous waste has been stored, transported, treated, disposed of, or otherwise handled.

(b) Certification Information. All information used to determine the waste is not a special waste shall be attached to the certification. The information shall include but not be limited to:

- (1) the means by which the generator has determined the waste is not a hazardous waste;
- (2) the means by which the generator has determined the waste is not a liquid;
- (3) if the waste undergoes testing, the analytic results obtained from testing, signed and dated by the person responsible for completing the analysis;
- (4) if the waste does not undergo testing, an explanation as to why no testing is needed;

(5) a description of the process generating the waste; and

(6) relevant material safety data sheets.

**669.07 Temporary Staging.** Soil classified according to Articles 669.05(a)(2), (b)(1), or (c) may be temporarily staged at the Contractor's option. Soil classified according to Articles 669.05(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), or (b)(2) shall be managed and disposed of without temporary staging to the greatest extent practicable. If circumstances beyond the Contractor's control require temporary staging of these latter materials, the Contractor shall request approval from the Engineer in writing.

Temporary staging shall be accomplished within the right-of-way and the Contractor's means and methods shall be described in the approved or amended RSPCP. Staging areas shall not be located within 200 feet (61 m) of a public or private water supply well; nor within 100 feet (30 m) of sensitive environmental receptor areas, including wetlands, rivers, streams, lakes, or designated habitat zones.

The method of staging shall consist of containerization or stockpiling as applicable for the type, classification, and physical state (i.e., liquid, solid, semisolid) of the material. Materials of different classifications shall be staged separately with no mixing or co-mingling.

When containers are used, the containers and their contents shall remain intact and inaccessible to unauthorized persons until the manner of disposal is determined. The Contractor shall be responsible for all activities associated with the storage containers including, but not limited to, the procurement, transport, and labeling of the containers. The Contractor shall not use a storage container if visual inspection of the container reveals the presence of free liquids or other substances that could cause the waste to be reclassified as a hazardous or special waste.

When stockpiles are used, they shall be covered with a minimum 20-mil plastic sheeting or tarps secured using weights or tie-downs. Perimeter berms or diversionary trenches shall be provided to contain and collect for disposal any water that drains from the soil. Stockpiles shall be managed to prevent or reduce potential dust generation.

When staging non-special waste, special waste, or hazardous waste, the following additional requirements shall apply:

- (a) **Non-Special Waste.** When stockpiling soil classified according to Article 669.05(a)(1) or 669.05(a)(5), an impermeable surface barrier between the materials and the ground surface shall be installed. The impermeable barrier shall consist of a minimum 20-mil plastic liner material and the surface of the stockpile area shall be clean and free of debris prior to placement of the liner. Measures shall also be taken to limit or discourage access to the staging area.
- (b) **Special Waste and Hazardous Waste.** Soil classified according to Article 669.05(a)(6) shall not be stockpiled but shall be containerized immediately upon generation in containers, tanks or containment buildings as defined by RCRA, Toxic Substances Control

Act (TSCA), and other applicable State or local regulations and requirements, including 35 Ill. Admin. Code Part 722, Standards Applicable to Generators of Hazardous Waste.

The staging area(s) shall be enclosed (by a fence or other structure) to restrict direct access to the area, and all required regulatory identification signs applicable to a staging area containing special waste or hazardous waste shall be deployed.

Storage containers shall be placed on an all-weather gravel-packed, asphalt, or concrete surface. Containers shall be in good condition and free of leaks, large dents, or severe rusting, which may compromise containment integrity. Containers must be constructed of, or lined with, materials that will not react or be otherwise incompatible with the hazardous or special waste contents. Containers used to store liquids shall not be filled more than 80 percent of the rated capacity. Incompatible wastes shall not be placed in the same container or comingled.

All containers shall be legibly labeled and marked using pre-printed labels and permanent marker in accordance with applicable regulations, clearly showing the date of waste generation, location and/or area of waste generation, and type of waste. The Contractor shall place these identifying markings on an exterior side surface of the container.

Storage containers shall be kept closed, and storage pads covered, except when access is needed by authorized personnel.

Special waste and hazardous waste shall be transported and disposed within 90 days from the date of generation.

**669.08 Underground Storage Tank Removal.** For the purposes of this section, an underground storage tank (UST) includes the underground storage tank, piping, electrical controls, pump island, vent pipes and appurtenances.

Prior to removing an UST, the Engineer shall determine whether the Department is considered an "owner" or "operator" of the UST as defined by the UST regulations (41 Ill. Adm. Code Part 176). Ownership of the UST refers to the Department's owning title to the UST during storage, use or dispensing of regulated substances. The Department may be considered an "operator" of the UST if it has control of, or has responsibility for, the daily operation of the UST. The Department may however voluntarily undertake actions to remove an UST from the ground without being deemed an "operator" of the UST.

In the event the Department is deemed not to be the "owner" or "operator" of the UST, the OSFM removal permit shall reflect who was the past "owner" or "operator" of the UST. If the "owner" or "operator" cannot be determined from past UST registration documents from OSFM, then the OSFM removal permit will state the "owner" or "operator" of the UST is the Department. The Department's Office of Chief Counsel (OCC) will review all UST removal permits prior to submitting any removal permit to the OSFM. If the Department is not the "owner" or "operator" of the UST then it will not register the UST or pay any registration fee.

The Contractor shall be responsible for obtaining permits required for removing the UST, notification to the OSFM, using an OSFM certified tank contractor, removal and disposal of the UST and its contents, and preparation and submittal of the OSFM Site Assessment Report in accordance with 41 Ill. Admin. Code Part 176.330.

The Contractor shall contact the Engineer and the OSFM's office at least 72 hours prior to removal to confirm the OSFM inspector's presence during the UST removal. Removal, transport, and disposal of the UST shall be according to the applicable portions of the latest revision of the "American Petroleum Institute (API) Recommended Practice 1604".

The Contractor shall collect and analyze tank content (sludge) for disposal purposes. The Contractor shall remove as much of the regulated substance from the UST system as necessary to prevent further release into the environment. All contents within the tank shall be removed, transported and disposed of, or recycled. The tank shall be removed and rendered empty according to IEPA definition.

The Contractor shall collect soil samples from the bottom and sidewalls of the excavated area in accordance with 35 Ill. Admin. Code Part 734.210(h) after the required backfill has been removed during the initial response action, to determine the level of contamination remaining in the ground, regardless if a release is confirmed or not by the OSFM on-site inspector.

In the event the UST is designated a leaking underground storage tank (LUST) by the OSFM's inspector, or confirmation by analytical results, the Contractor shall notify the Engineer and the District Environmental Studies Unit (DESU). Upon confirmation of a release of contaminants and notifications to the Engineer and DESU, the Contractor shall report the release to the Illinois Emergency Management Agency (IEMA) (e.g., by telephone or electronic mail) and provide them with whatever information is available ("owner" or "operator" shall be stated as the past registered "owner" or "operator", or the IDOT District in which the tank is located and the DESU Manager).

The Contractor shall perform the following initial response actions if a release is indicated by the OSFM inspector:

- (a) Take immediate action to prevent any further release of the regulated substance to the environment, which may include removing, at the Engineer's discretion, and disposing of up to 4 ft (1.2 m) of the contaminated material, as measured from the outside dimension of the tank;
- (b) Identify and mitigate fire, explosion and vapor hazards;
- (c) Visually inspect any above ground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater; and
- (d) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors and free product that have migrated from the tank excavation zone and entered into subsurface structures (such as sewers or basements).

The tank excavation shall be backfilled according to applicable portions of Sections 205, 208, and 550 with a material that will compact and develop stability. All uncontaminated concrete and soil removed during tank extraction may be used to backfill the excavation, at the discretion of the Engineer.

After backfilling the excavation, the site shall be graded and cleaned.

**669.09 Regulated Substances Final Construction Report.** Not later than 90 days after completing this work, the Contractor shall submit a "Regulated Substances Final Construction Report (RSFCR)" to the Engineer using form BDE 2733 and required attachments. The form shall be signed by an Illinois licensed Professional Engineer or Professional Geologist.

**669.10 Method of Measurement.** Non-special waste, special waste, and hazardous waste soil will be measured for payment according to Article 202.07(b) when performing earth excavation, Article 502.12(b) when excavating for structures, or by computing the volume of the trench using the maximum trench width permitted and the actual depth of the trench.

Groundwater containerized and transported off-site for management, storage, and disposal will be measured for payment in gallons (liters).

Backfill plugs will be measured in cubic yards (cubic meters) in place, except the quantity for which payment will be made shall not exceed the volume of the trench, as computed by using the maximum width of trench permitted by the Specifications and the actual depth of the trench, with a deduction for the volume of the pipe.

Engineered Barriers will be measured for payment in square yards (square meters).

**669.11 Basis of Payment.** The work of preparing, submitting and administering a Regulated Substances Pre-Construction Plan will be paid for at the contract lump sum price for REGULATED SUBSTANCES PRE-CONSTRUCTION PLAN.

Regulated substances monitoring, including completion of form BDE 2732 for each day of work, will be paid for at the contract unit price per calendar day, or fraction thereof to the nearest 0.5 calendar day, for REGULATED SUBSTANCES MONITORING.

The installation of engineered barriers will be paid for at the contract unit price per square yard (square meter) for ENGINEERED BARRIER.

The work of UST removal, soil excavation, soil and content sampling, the management of excavated soil and UST content, and UST disposal, will be paid for at the contract unit price per each for UNDERGROUND STORAGE TANK REMOVAL.

The transportation and disposal of soil and other materials from an excavation determined to be contaminated will be paid for at the contract unit price per cubic yard (cubic meter) for

**NON-SPECIAL WASTE DISPOSAL, SPECIAL WASTE DISPOSAL, or HAZARDOUS WASTE DISPOSAL.**

The transportation and disposal of groundwater from an excavation determined to be contaminated will be paid for at the contract unit price per gallon (liter) for SPECIAL WASTE GROUNDWATER DISPOSAL or HAZARDOUS WASTE GROUNDWATER DISPOSAL. When groundwater is discharged to a sanitary or combined sewer by permit, the cost will be paid for according to Article 109.05.

Backfill plugs will be paid for at the contract unit price per cubic yard (cubic meter) for BACKFILL PLUGS.

Payment for temporary staging of soil classified according to Articles 669.05(a)(1), (a)(3), (a)(4), (a)(5), (a)(6), or (b)(2) will be paid for according to Article 109.04. The Department will not be responsible for any additional costs incurred, if mismanagement of the staging area, storage containers, or their contents by the Contractor results in excess cost expenditure for disposal or other material management requirements.

Payment for accumulated stormwater removal and disposal will be according to Article 109.04. Payment will only be allowed if appropriate stormwater and erosion control methods were used.

Payment for decontamination, labor, material, and equipment for monitoring areas beyond the specified areas, with the Engineer's prior written approval, will be according to Article 109.04.

When the waste material for disposal requires sampling for landfill disposal acceptance, the samples shall be analyzed for TCLP VOCs, SVOCs, RCRA metals, pH, ignitability, and paint filter test. The analysis will be paid for at the contract unit price per each for SOIL DISPOSAL ANALYSIS using EPA Methods 1311 (extraction), 8260B for VOCs, 8270C for SVOCs, 6010B and 7470A for RCRA metals, 9045C for pH, 1030 for ignitability, and 9095A for paint filter.

The work of preparing, submitting and administering a Regulated Substances Final Construction Report will be paid for at the contract lump sum price REGULATED SUBSTANCES FINAL CONSTRUCTION REPORT."



EPA Method 8081 for pesticides, and ICP instrument and EPA Methods 6010B, 7471A, 1311 (extraction), 6010B, and 7470A for metals.

- (f) Soil Disposal Analysis. When the waste material for disposal requires sampling for disposal acceptance, the samples shall be analyzed for TCLP VOCs, SVOCs, RCRA metals, pH, ignitability, and paint filter test. The analysis will be paid for at the contract unit price per each for SOIL DISPOSAL ANALYSIS using EPA Methods 1311 (extraction), 8260B for VOCs, 8270C for SVOCs, 6010B and 7470A for RCRA metals, 9045C for pH, 1030 for ignitability, and 9095A for paint filter.

The work of preparing, submitting and administering a Regulated Substances Final Construction Report will be paid for at the contract lump sum price REGULATED SUBSTANCES FINAL CONSTRUCTION REPORT.”

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## **SUBCONTRACTOR MOBILIZATION PAYMENTS (BDE)**

Effective: November 2, 2017

Revised: April 1, 2019

Replace the second paragraph of Article 109.12 of the Standard Specifications with the following:

“This mobilization payment shall be made at least seven days prior to the subcontractor starting work. The amount paid shall be at the following percentage of the amount of the subcontract reported on form BC 260A submitted for the approval of the subcontractor’s work.

Value of Subcontract Reported on Form BC 260A	Mobilization Percentage
Less than \$10,000	25%
\$10,000 to less than \$20,000	20%
\$20,000 to less than \$40,000	18%
\$40,000 to less than \$60,000	16%
\$60,000 to less than \$80,000	14%
\$80,000 to less than \$100,000	12%
\$100,000 to less than \$250,000	10%
\$250,000 to less than \$500,000	9%
\$500,000 to \$750,000	8%
Over \$750,000	7%”

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