



SPECIAL PUBLIC NOTICE

U.S. Army Corps
of Engineers
Vicksburg District

Issued: March 8, 2021

INFORMATIONAL PUBLIC NOTICE

PUBLIC NOTICE ANNOUNCEMENT FOR APPROVAL OF WATER QUALITY CERTIFICATIONS AND COASTAL ZONE MANAGEMENT ACT CONSISTENCY CONCURRENCE FOR NATIONWIDE PERMIT ISSUANCE AND REISSUANCE FOR THE STATE OF MISSISSIPPI

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and issuance of 4 new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. Subsequent to the publication of the final rule, the U.S. Army Corps of Engineers Districts having regulatory authority within the State of Mississippi (Memphis, Mobile, Nashville and Vicksburg) have proposed no regional conditions for the State of Mississippi but have approved conditions for Clean Water Act, Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency associated with the following 16 NWP. These NWP will go into effect on March 15, 2021, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects

- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

This informational public notice is provided to inform the regulated public of its Section 401 responsibilities outlined below for each NWP which have been set forth under Section 401 of the Clean Water Act on behalf of the State of Mississippi and the Mississippi Band of Choctaw Indians (MBCI) as well as to outline the requirements for consistency with the CZMA in order to ensure compliance with each respective NWP:

NWP 12 Section 401 WQC Conditions:

- a. In cases where a pre-construction notice (PCN) is required, the applicant shall provide the PCN to the Mississippi Department of Environmental Quality (MDEQ/Department) for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

State of Mississippi Section 303(d) listed waters: https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/MS_2020_Adopted_Section_303d_list.pdf

Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- b. In cases where a PCN is required, the applicant shall provide the PCN to MDEQ for projects associated with hydrofracking activities for oil and gas exploration.
- c. Discharges of cuttings, drilling mud, hydrostatic testing water, or any other waste material are prohibited unless approved in writing or permitted by the MDEQ.
- d. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- e. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.

- f. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- g. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.
- h. The applicant shall provide the MDEQ copies of verifications under this NWP.

NWP 21 Section 401 WQC Conditions:

MDEQ Office of Pollution Control has denied WQC for NWP 21. The applicant shall apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.

NWP 29 Section 401 WQC Conditions:

- a. Impacts in excess of 300 linear feet to perennial and/or intermittent streams shall not be authorized by this certification. Applicants proposing to impact greater than 300 linear feet of perennial and/or intermittent streams are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- b. For the construction or expansion of golf courses or attendant features, the applicant shall obtain approval or waiver for a Storm Water Quality Management Plan from MDEQ prior to construction.
- c. In cases where a pre-construction notice (PCN) is required, the applicant shall provide the PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

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Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- d. This certification shall not allow discharges of dredged or fill materials associated with the construction of developments in certain existing subdivisions on the Mississippi Gulf Coast originally platted in lands which, because of the passage of the Federal Act and related laws and/or regulations, are presently unsuitable for development, as described in Exhibit E of 11 Mississippi Administrative Code Part 6, Chapter 1, Subchapter 3 (coastal subdivisions platted prior to the Clean Water Act with waterfront access to estuarine waters by man-made canals).

These areas are in Hancock County, Mississippi and are associated with Bayou La Croix. Applicants proposing to discharge dredged and/or fill material within the aforementioned subdivisions are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121. (Enclosure)

- e. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- f. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- g. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- h. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency (EPA) has denied WQC for NWP 29 on MBCI tribal lands. The applicant must request an Individual WQC from EPA, consistent with 40 CFR 121.

NWP 39 Section 401 WQC Conditions:

- a. Impacts in excess of 300 linear feet to perennial and/or intermittent streams shall not be authorized by this certification. Applicants proposing to impact greater than 300 linear feet of perennial and/or intermittent streams are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- b. This certification shall not be used for marinas. Applicants proposing to construct marinas are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- c. In cases where a pre-construction notice (PCN) is required, the applicant shall provide the PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

State of Mississippi Section 303(d) listed waters: https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/MS_2020_Adopted_Section_303d_list.pdf

Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- d. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- e. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- f. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- g. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 39 on MBCI tribal lands. The applicant must request an Individual WQC from EPA, consistent with 40 CFR 121.

NWP 40 Section 401 WQC Conditions:

- a. In cases where a pre-construction notice (PCN) is required, the applicant shall provide a PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

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Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- b. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.

- c. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- d. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- e. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 40 on MBCI tribal lands. The applicant must request an Individual WQC from EPA, consistent with 40 CFR 121.

NWP 42 Section 401 WQC Conditions:

- a. Impacts in excess of 300 linear feet to perennial and/or intermittent streams shall not be authorized by this certification. Applicants proposing to impact greater than 300 linear feet of perennial and/or intermittent streams are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- b. For the construction or expansion of golf courses or attendant features, the applicant shall obtain approval or waiver for a Storm Water Quality Management Plan from MDEQ prior to construction.
- c. In cases where a pre-construction notice (PCN) is required, the applicant shall provide a PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

State of Mississippi Section 303(d) listed waters: https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/MS_2020_Adopted_Section_303d_list.pdf

Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- d. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.

- e. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- f. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- g. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 42 on MBCI tribal lands. The applicant must request an Individual WQC from EPA, consistent with 40 CFR 121.

NWP 43 Section 401 WQC Conditions:

- a. Impacts in excess of 300 linear feet to perennial and/or intermittent streams shall not be authorized by this certification. Applicants proposing to impact greater than 300 linear feet of perennial and/or intermittent streams are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- b. This certification shall not authorize in-stream treatment of stormwater. Applicants proposing in-stream treatment of stormwater are required to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.
- c. For the construction or expansion of golf courses or attendant features, the applicant shall obtain approval or waiver for a Storm Water Quality Management Plan from MDEQ prior to construction.
- d. In cases where a pre-construction notice (PCN) is required, the applicant shall provide a PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

State of Mississippi Section 303(d) listed waters: https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/MS_2020_Adopted_Section_303d_list.pdf

Total Maximum Daily Load (TMDL) listed waters:

<https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- e. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- f. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- g. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- h. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 43 on MBCI tribal lands. The applicant must request an Individual WQC, consistent with 40 CFR 121.

NWP 44 Section 401 WQC Conditions:

MDEQ Office of Pollution Control has denied WQC for NWP 44. The applicant will need to apply to MDEQ for Individual WQC in accordance with 40 CFR Part 121.

The Environmental Protection Agency has denied WQC for NWP 44 on MBCI tribal lands. The applicant must request an Individual WQC, consistent with 40 CFR 121.

NWP 48 Section 401 WQC Conditions:

- a. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.

- b. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- c. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

NWP 50 Section 401 WQC Conditions:

- a. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- b. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- c. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- d. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 50 on MBCI tribal lands. The applicant must request an Individual WQC, consistent with 40 CFR 121.

NWP 51 and NWP 52 Section 401 WQC Conditions:

- a. The applicant shall obtain any necessary air pollution control permits and/or approvals.
- b. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- c. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations

of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.

- d. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- e. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Environmental Protection Agency has denied WQC for NWP 51 and NWP 52 on MBCI tribal lands. The applicant must request an Individual WQC, consistent with 40 CFR 121.

NWP 55 and NWP 56 Section 401 WQC Conditions:

- a. All material placed for beneficial use shall be properly tested and analyzed as required by the Mississippi Beneficial Use Program.
- b. Appropriate installation of erosion and sediment controls shall be required during the construction phase, such as buffer zones, and slope cover. Appropriate Best Management Practices (BMPs) are found in the Field Manual for Erosion and Sediment Control.
- c. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- d. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- e. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- f. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

NWP 57 and NWP 58 Section 401 WQC Conditions:

- a. In cases where a pre-construction notice (PCN) is required, the applicant shall provide a PCN to the MDEQ for projects that include channel work within waterways found on the latest version of the State of Mississippi's Section 303(d) List of Impaired Water Bodies for sediment or biological impairment or waterways with a completed Total Maximum Daily Load (TMDL) for sediment or biological impairment.

State of Mississippi Section 303(d) listed waters: https://www.mdeq.ms.gov/wp-content/uploads/TMDLs/MS_2020_Adopted_Section_303d_list.pdf

Total Maximum Daily Load (TMDL) listed waters: <https://www.mdeq.ms.gov/water/surface-water/tmdl/completed-tmdls/>

- b. The applicant shall obtain appropriate wastewater permits and/or approvals for the proposed activity prior to the commencement of construction activities.
- c. For projects greater than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall obtain the necessary coverage under the State of Mississippi's Large Construction Storm Water General NPDES Permit. For projects greater than one, to less the five acres of total ground disturbances including clearing, grading, excavating, or other construction activities, the applicant shall follow the conditions and limitations of the State of Mississippi's Small Construction Storm Water General NPDES Permit. No construction activities shall begin until the necessary approvals and/or permits have been obtained.
- d. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
- e. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.
- f. The applicant shall provide the Department (MDEQ) copies of authorizations of coverages under this NWP.

The Environmental Protection Agency has denied WQC for NWP 57 and NWP 58 on MBCI tribal lands. The applicant must request an Individual WQC, consistent with 40 CFR 121.


Coastal Zone Management Act

The Mississippi Department of Marine Resources (MDMR) issued a CZMA consistency determination for the 12 reissued NWPs (12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51 and 52) and the 4 newly issued NWPs (55, 56, 57 and 58).

CZMA concurrence was not granted by MDMR for all NWP's located within the four categories of waters of the United States (U.S.), including wetlands, listed below. Therefore, CZMA concurrences are considered denied and applicants will need to contact MDMR for project specific CZMA review and concurrence determination for the following waters:

- a. All Coastal Wetlands (as defined by MS Code § 49-27-5(a));
- b. All jurisdictional wetlands having a surface hydrological connection to Coastal Wetlands, and that are located within 200 feet landward of the mean high tide mark (For the purposes of Section 404 permitting and CZMA compliance, the line of demarcation will be the high tide line as defined in 33 CFR 328);
- c. All marsh habitats (i.e. all tidal emergent wetlands dominated by salt or estuarine marsh plant species, and all non-tidal emergent wetlands dominated by freshwater marsh plant species, abutting and/or adjacent to tidal emergent wetlands) in Hancock, Harrison, and Jackson counties (except pine savannah and pitcher plant bogs) having a surface hydrological connection to tidal waters in Hancock, Harrison, and Jackson counties, whether saltwater, brackish, or freshwater marshes and including high marsh habitat, even if located more than 200 feet landward of the mean high tide mark (For the purposes of Section 404 permitting and CZMA compliance, the line of demarcation will be the high tide line as defined in 33 CFR 328); and,
- d. All jurisdictional stream habitats, whether perennial or intermittent.

The full text of the conditions for the approved water quality certifications and CZMA consistency in association with the 12 reissued NWP's (12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and the 4 newly issued NWP's (55, 56, 57, and 58) are available for viewing at: <https://www.mvk.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits/>



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