Iowa Environmental Council

505 Fifth Ave Suite 850
Des Moines IA 50309
515.244.1194
iaenvironment.org

February 20, 2026

Section401WQC@dnr.iowa.gov
Iowa Department of Natural Resources
Attn: Section 401 Water Quality Certification
c/o Brandon Harland
6200 Park Ave. Ste. 200
Des Moines, Iowa, 50321

RE: Draft 401 Certification of Regional General Permit 39

Dear Mr. Harland:

The Iowa Environmental Council ("IEC") offers the following comments on the proposed Section 401 Certification of Regional General Permit 39 by the Iowa Department of Natural Resources ("IDNR"). These comments represent the views of the Iowa Environmental Council, an alliance of nearly 100 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC's members hike, fish, paddle, swim, and recreate in and around wetlands, lakes, rivers, and streams throughout the state. IEC has tracked progress under the state's Nutrient Reduction Strategy and advocated for faster implementation of conservation practices, including wetlands.

IEC is concerned that the draft certifications do not meet the requirements of the Clean Water Act because they allow unnecessary degradation and impose conditions that are too vague to enforce. We recommend IDNR clarify language in the permit to facilitate compliance and minimize potential habitat loss.

I. IDNR Should Clarify the Proposed Section 401 Certification Conditions to Facilitate Compliance.

IEC recognizes and appreciates the intent of draft conditions to ensure compliance with the state's water quality standards.[1] However, the proposed conditions are vague to the point of not being meaningful to permittees. The conditions provide no indication of what actions must be taken or what "properly managed" means, nor how the conditions relate to the cited general water quality standards in the narrative form.[2] Because the terms are vague, the conditions fail to

[1] Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for Regional General Permit 39 (2026).
[2] *Id.*

satisfy the requirement for a "statement explaining *why* each of the included conditions is necessary" (emphasis added).[3]

Condition 3 requires "all cleared vegetative materials shall be properly managed in such a manner that it cannot enter a water of the state and cause a violation of water quality requirements."[4] There is no information on which requirements might be violated, how far removed the materials should be from the state's water, or what is considered proper disposal of vegetative material.

Condition 4 applies the same language to "properly manage[]" construction debris.[5] Condition 4 provides no clear guidance on whether debris generated by moving heavy equipment in and out of the stream bed meets the definition of construction debris. Iowa's general water quality criteria provides that waters shall be free from floating debris, oil, grease, scum, and other floating materials as well as a turbidity limit of 25 NTUs.[6] For the purposes of the certification, it is not clear whether construction is debris limited to those narrative standards or what constitutes "properly managing" construction debris so that those water quality standards are not violated.

Condition 5 addresses erosion management.[7] Under the proposed certification, the condition would only indicate that erosion be managed in a way that sediment is not discharged to the water of the state in a manner that results in a violation of water quality standards.[8] The condition then refers the permittee to the general water quality criteria.[9] The most relevant water quality standard is the turbidity requirement of 25 NTUs.[10] IDNR could eliminate some confusion and merely restate the condition regarding turbidity in regards to protecting erosion and retain the previous conditions on vegetative buffers and filter strips as proper erosion management.

Condition 7 provides unclear guidance on the proper management of stockpiled dredged materials.[11] The condition does not indicate whether a certain distance is required to ensure that the dredged materials do not enter the waters of the state due to normal weather conditions,[12] nor is there any guidance on where the stockpiled dredged material is to be disposed of in compliance with Iowa's narrative water quality standards.[13]

---

[3] 40 C.F.R. § 121.7(d)(3).
[4] *Id.*
[5] *Id.*
[6] Iowa Admin. Code r. 567-61.3(2)(f).
[7] Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for Regional General Permit 39 (2026).
[8] *Id.*
[9] *Id.*
[10] Iowa Admin. Code r. 567-61.3(2)(f).
[11] Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for Regional General Permit 39 (2026).
[12] *Id.*
[13] *Id.*

As an alternative, Minnesota 401 certification requires compliance with the state's water quality standards, but also requires BMPs to be used.[14] Iowa's own certification of erosion management could use language like Minnesota's to describe how dredged stockpiled materials must be managed to meet state water quality standards. Condition 7 could instead read: "stockpiled dredged materials shall be managed at such a distance from the waterway as to prevent sediment discharge to waters of the state in a manner that causes a violation of water quality standards." In Minnesota's guidance on BMPs, the state describes the practices to prevent soil erosion at project sites: "management of dredged material should take place at upland sites, with the material being spread out, seeded, mulched and stabilized in place."[15] IDNR could provide similar guidance to permittees.

Proposed condition 8 of IDNR's draft certification would require that "Hydraulically dredged material shall be managed to ensure the return water meets water quality requirements."[16] The condition does not address protection of native mussel species likely to be impacted. IEC raised this issue in prior certifications of federal permits, but IDNR did not adjust the condition in response to IEC's comments.[17] IEC remains concerned that the language of this condition is too vague to provide permittees with adequate notice of the actions they are required to take. Allowing dredged material to be returned to the waterbody can affect mussels, including species that may not be subject to the protections identified in NWP General Condition 7 for protection of federally-listed species.[18] The condition must specify how hydraulic dredging will be managed so as to prevent harm to the numerous native mussels under threat.

II. IEC Supports Conditions to Protect Outstanding Resources.

IDNR has proposed to require individual certifications for any project that proposes discharges to Outstanding Iowa Waters or Outstanding National Resource Waters. Iowa law provides an additional degree of protection for Outstanding Iowa Waters and Outstanding Natural Resource Value waters.[19] Iowa also has a variety of rare wetland types that could be difficult to replace. As a result, IDNR should address these high-value waters through individual certification.

Reducing protections for bogs, fens, seeps and sedge meadows could have lasting consequences. "Fens are peat-forming wetlands that rely on groundwater input and require thousands of years to

[14] Minn. R. 7001.1080 (2025) (incorporated by Minn. R. 7001.1470, subp. 2).
[15] Minnesota Pollution Control Agency, *Best Management Practices for the Management of Dredged Material* (Apr. 2024), at 5 https://www.pca.state.mn.us/sites/default/files/wq-gen2-02.pdf.
[16] Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for the Nationwide Permits (2025).
[17] IDNR, "Public Participation Responsiveness Summary for Section 401 Water Quality Certification of U.S. Army Corps of Engineers Section 404 Nationwide Permits" (Dec. 18, 2025), at 6; IDNR, "Public Participation Responsiveness Summary for Section 401 Water Quality Certification of U.S. Army Corps of Engineers Section 404 Nationwide Permits" (Dec. 14, 2020), at 18-19.
[18] *See* 90 Fed. Reg. at 26,100, 26,163.
[19] Iowa Admin. Code r. 567-61.3(2)(c), (d).

develop and cannot easily be restored once destroyed."[20] Fens are a type of wetland that is fed by groundwater due to the water table existing at or near the ground surface.[21] Fens usually exist on poorly aerated substrate and consist of plants that can exist in wet and reducing conditions.[22] According to Michigan State University, prairie fens are a globally rare wetland most common in the Midwest and Northeast United States.[23]

In Iowa, one of the preserved fens is the Gray-Hart Preserve and it protects one of the state's largest calcareous fens.[24] According to the Nature Conservancy, fens are Iowa's rarest type of wetland; they support thick peat soil accumulation and specialized calciphile plants such as grass-of-Parnassus and sterile sedge.[25]

Fens, bogs, and other peatlands are significant carbon sinks as the formation of peatlands results in several feet of stored carbon material below the surface level.[26] Most of the organic material does not degrade, which traps the carbon.[27] As climate change affects farmers, outdoor recreationalists, and the overall population, protection of these areas is key to reducing impacts as well as preserving biodiversity in various ecological systems. IDNR should ensure that either the Corps or IDNR imposes conditions to protect such waters and wetlands.

Conclusion

For the reasons articulated above, IDNR must strengthen the conditions in its draft certification to ensure compliance with the state's water quality standards. The draft certification would allow unnecessary degradation, inappropriately removes protections from the existing certification, does not protect mussel species that are important for a healthy aquatic ecosystem, and contains conditions that are unreasonably vague. The IDNR must address these problems before issuing the certification to avoid violation of the Clean Water Act and its implementing regulations.

We appreciate IDNR's efforts to ensure these projects protect water quality throughout the state. Thank you for the opportunity to provide these comments and for your consideration of them.

---

[20] U.S. Forest Service, *What is a Fen?*, U.S. Dept. of Ag. (last accessed Nov. 25, 2025), available at https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml.
[21] *Id.*
[22] *Id.*
[23] Dept. of Entomology Native Plants and Ecosystem Services, *Fen Restoration*, Michigan State University (last accessed Nov. 25, 2025), available at https://www.canr.msu.edu/nativeplants/restoration/.
[24] Grey-Hart Preserve, *Gray-Hart Preserve Protects One of the State's Largest Calcareous Fens and Showcases Many of the Brilliant Wildflowers Native to Iowa's Wet Prairies and Fens*, The Nature Conservancy (last accessed Nov. 25, 2025), available at https://www.nature.org/en-us/get-involved/how-to-help/places-we-protect/gray-hart-preserve/.
[25] *Id.*
[26] *See* Jenny Hance, *Ultimate Bogs: How Saving Peatlands Could Help Save the Planet*, The Guardian (July 28, 2017) https://www.theguardian.com/environment/2017/jul/28/ultimate-bogs-how-saving-peatlands-could-help-save-the-planet; UN Environment Program, *Peatlands Store Twice As Much Carbon as all the World's Forests*, (2019) https://www.unenvironment.org/news-and-stories/story/peatlands-store-twice-much-carbon-all-worlds-forests.
[27] Jenny Hance, *Ultimate Bogs: How Saving Peatlands Could Help Save the Planet*, The Guardian (July 28, 2017) https://www.theguardian.com/environment/2017/jul/28/ultimate-bogs-how-saving-peatlands-could-help-save-the-planet

We would be happy to address any questions about the comments and look forward to hearing from you soon.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt
General Counsel
Iowa Environmental Council

/s/ Colleen Fowle

Colleen Fowle
Water Program Manager
Iowa Environmental Council