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November 26, 2025

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**RE: Draft 401 Water Quality Certification for the 2025 Nationwide Permits**

Dear Mr. Willard:

The Iowa Environmental Council (IEC) offers the following comments on the proposed Clean Water Act Section 401 Certification of the Nationwide Permits (NWP) proposed by the U.S. Army Corps of Engineers (Corps). These comments represent the views of the Iowa Environmental Council, an alliance of 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 tracks section 401 certifications to keep their members apprised of how permitted projects will affect local recreation and enjoyment of Iowa's wetlands, lakes, rivers, and streams. 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.

**I. IDNR's Antidegradation Review Ignored Practicable Less-Degrading Alternatives and Did Not Demonstrate Necessity of Degradation.**

Antidegradation requires an analysis of alternatives to ensure that, for waters meeting water quality standards, any "lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located."<sup>1</sup> In considering alternatives, "the least degrading alternative that is practicable, economically efficient, and affordable should be considered the preferred pollution control alternative."<sup>2</sup> In considering alternatives, the applicant "shall evaluate a range of non-degrading or less-degrading pollution control alternatives" for the

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<sup>1</sup> Iowa Admin. Code r. 567-61.2(2)(b) (Oct. 7, 2020). Because the Corps has proposed to require individual certification for outstanding waters and certain wetlands as a regional condition for the NWPs, we do not address those waters in this antidegradation discussion.

<sup>2</sup> "Iowa Antidegradation Implementation Procedure," IDNR, Feb. 17, 2010, at 13.

purpose of identifying “reliable, demonstrated processes or practices.”<sup>3</sup> As demonstrated by the rationale IDNR developed, general permit certifications under Section 401 require antidegradation review, and the review is conducted by IDNR rather than individual permit applicants.<sup>4</sup>

Following the 2020 reissuance of the NWP and IDNR certification, the state took the position that portions of the Antidegradation Implementation Procedure do not apply to 404 permits.<sup>5</sup> While particular terms and requirements apply only to section 402 permits (NPDES), the nature of 404 permits still allows consideration of alternatives and evaluation of degradation.

IDNR’s alternatives analysis for these NWPs relies on the alternatives analysis conducted by the Corps.<sup>6</sup> The Corps conducted its alternatives analysis to satisfy the National Environmental Policy Act for each nationwide permit.<sup>7</sup> The Corps conducted an environmental assessment rather than a full environmental impact statement for which regulations define alternatives to consider.<sup>8</sup> The Corps considered a no-action alternative, identical NWP text, changes to the NWP text, and case-specific alternatives.<sup>9</sup>

The set of alternatives that the Corps considered did not address the existing conditions imposed as Regional Conditions by the local Corps district or the conditions imposed by IDNR in the 401 certification. Because the IDNR relied on the Corps alternatives analysis, it did not consider the existing Regional Conditions or IDNR conditions. IDNR did not identify or describe its analysis of the proposed conditions, nor did it explain why those conditions are “the least degrading alternative that is practicable, economically efficient, and affordable” as required by the state’s Antidegradation Implementation Procedure.<sup>10</sup>

As explained below, the proposed conditions in the 401 certification lack sufficient clarity to ensure compliance. They will therefore lead to additional degradation of Iowa waters, including waters that presently meet water quality standards and are subject to Tier 2 protection<sup>11</sup> under Iowa’s antidegradation rules. As DNR noted in its responsiveness summary to the 2020 issuance, the conditions need to be enforceable by the federal permitting agency,<sup>12</sup> which will be nearly impossible if the conditions are too vague to force action.

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<sup>3</sup> *Id.*

<sup>4</sup> Ian Willard, IDNR, “Rationale for Section 401 Water Quality Certification of the 2025 Nationwide Permits,” Oct. 30, 2025, at 2-3.

<sup>5</sup> 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 6-9.

<sup>6</sup> *Id.*

<sup>7</sup> *See* Fed. Reg. 26,100, 26,106 (noting an environmental assessment and finding of no significant impact for each NWP).

<sup>8</sup> *Id.*

<sup>9</sup> *See, e.g.*, “Draft Decision Document Nationwide Permit 2,” U.S. Army Corps of Engineers, June 13, 2025, at 4-5 (describing alternatives for NWP 2).

<sup>10</sup> “Iowa Antidegradation Implementation Procedure,” IDNR, Feb. 17, 2010, at 13.

<sup>11</sup> Iowa Admin. Code r. 567-61.2(2)(b).

<sup>12</sup> 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 10-11.

Additional degradation could be allowed if the antidegradation review provided justification that the degradation was “necessary to accommodate important economic or social development” in the area.<sup>13</sup> For these general permits, IDNR considered the statewide impact of certifying the NWP’s.<sup>14</sup> IEC does not take issue with accounting for the statewide impact of certification for a general permit that applies statewide. However, the method of evaluating the economic need depends on a comparison of the costs of each alternative. IDNR compared the costs of individual and nationwide permits.<sup>15</sup> That comparison did not show that the difference in cost was for similar projects – typically, projects subject to general permits are smaller and less complex, making their cost lower regardless of permit type. The evaluation gave no accounting of the costs of other alternatives. Absent a demonstration that the existing conditions are not practicable, economically efficient, and affordable, IDNR cannot impose conditions less stringent than existing conditions, because doing so would allow degradation.

Because IDNR did not evaluate reasonable alternatives that are in effect today or provide justification for their future impracticability, it cannot conclude that it has selected the least degrading alternative.<sup>16</sup> Because IDNR did not evaluate the costs of alternative conditions or demonstrate that the existing conditions are impractical, it cannot conclude that the degradation is necessary.<sup>17</sup> IEC recommends that IDNR retain the existing conditions or make them more protective of Iowa’s waters, where doing so is practicable.

## **II. IDNR Should Add Conditions to Protect Iowa Waters in Light of *Sackett v. EPA*.**

The obligation to obtain a section 404 permit (such as a NWP) is triggered by the discharge of dredged or fill material into “waters of the United States.”<sup>18</sup> In May 2023, the U.S. Supreme Court ruled that non-wetland water bodies like rivers, lakes, and streams must be “relatively permanent” in order to be protected “waters of the United States” under the Clean Water Act and that wetlands could only be protected when they have a “continuous surface connection” with such “relatively permanent” waters.<sup>19</sup> The Court’s reinterpretation of the Clean Water Act means that many fewer discharges will require such permits and fewer waters in Iowa will be protected by the conditions of those permits.

Available analyses and estimates suggest the rollback in coverage will be substantial, and the Corps’ failure in this rulemaking to reckon with the decision makes its estimates of impacts inherently suspect. According to an EPA estimate immediately following the Court’s ruling, approximately 63 percent of the nation’s wetland acreage and between 1.2 and 4.9 million

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<sup>13</sup> *Id.*

<sup>14</sup> Ian Willard, IDNR, “Rationale for Section 401 Water Quality Certification of the 2025 Nationwide Permits,” Oct. 30, 2025, at 2-3.

<sup>15</sup> *Id.*

<sup>16</sup> *Cf. id.* at Finding 3 (“All cost-effective and reasonable BMPs for nonpoint source pollution control are implemented”).

<sup>17</sup> *Cf. id.* at Finding 4 (“Allowing degradation of water quality is necessary and accommodates important economic or social development from activities authorized by NWP’s.”).

<sup>18</sup> 33 U.S.C. §§ 1311(a) (prohibiting discharges of pollutants except in compliance with other sections of the law), 1344 (authorizing the Army to issue permits for the discharge of dredged/fill material).

<sup>19</sup> *Sackett v. EPA*, 598 U.S. 651, 678-79 (2023)

miles of streams could lack federal protection.<sup>20</sup> The Corps, for its part, claims ignorance and entirely fails to acknowledge the potential impacts of the decision on streams.

The Corps' decision documents include a two-paragraph discussion of *Sackett*, repeating the Court's holding and summarizing some studies of the impacts of prior Supreme Court rulings, but ultimately concludes the effect "is likely to vary substantially by geographic region."<sup>21</sup> Apart from this conclusion, the Corps does not discuss *Sackett*, much less attempt to explain how its estimates of impacted waters took the decision into account; as such, it lacks the factual foundation to make a reasonable estimate of the number of times various NWP's would be used.

EPA and the Corps recently proposed a new definition for Waters of the United States that would apply the *Sackett* definition and narrow the scope of applicability.<sup>22</sup> Many waters previously subject to 404 permits will no longer be subject to those conditions.

IDNR does not address this change in scope at any point in its discussion of potential degradation or the appropriate conditions to impose. While the change in definition means the permits will apply to fewer waters, they will generally apply to the larger, more permanent waters that have significance to water quality, water flow, and ecology. IDNR has a duty to ensure that all waters of the state will not be subject to harmful degradation and should take great care because of the potential losses of other waters no longer protected by section 404.

The *Sackett* decision will likely reduce the number of projects that hit thresholds requiring pre-construction notification. IDNR should consider refusing to certify NWP's that will have large cumulative effects but may not trigger pre-construction notification thresholds, such as linear projects that treat each stream crossing as a separate action.

### **III. 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.<sup>23</sup> 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

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<sup>20</sup> Allyson Chiu, "Biden rule, heeding Supreme Court, could strip over half of U.S. wetlands' protections," Washington Post (Aug 29, 2023), <https://www.washingtonpost.com/climate-environment/2023/08/29/epa-new-wetland-rule/>. See also NRDC, Mapping Destruction: Using GIS Modeling to Show the Disastrous Impacts of *Sackett v. EPA* on America's Wetlands (Mar. 2025) (under the least restrictive interpretation modeled, at least 19 million acres of wetlands—60 percent of the individual wetlands modeled—predicted to be left unprotected and, under the most restrictive interpretation, more than 70 million acres of wetlands—approximately 84 percent of the total area eligible for protection before *Sackett*—would lack federal safeguards), <https://www.nrdc.org/resources/mapping-destruction>.

<sup>21</sup> E.g., Draft NWP 12 Decision Document at 22.

<sup>22</sup> 90 Fed. Reg. 52,498 (Nov. 20, 2025).

<sup>23</sup> Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for the Nationwide Permits (2025).

water quality standards in the narrative form.<sup>24</sup> Because the terms are vague, the conditions fail to satisfy the requirement for a “statement explaining *why* each of the included conditions is necessary” (emphasis added).<sup>25</sup>

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.”<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> The condition then refers the permittee to the general water quality criteria.<sup>31</sup> The most relevant water quality standard is the turbidity requirement of 25 NTUs.<sup>32</sup> 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.<sup>33</sup> 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,<sup>34</sup> nor is there any guidance on where the stockpiled dredged material is to be disposed of in

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<sup>24</sup> *Id.*

<sup>25</sup> 40 C.F.R. § 121.7(d)(3).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Iowa Admin. Code r. 567-61.3(2)(f).

<sup>29</sup> Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for the Nationwide Permits (2025).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Iowa Admin. Code r. 567-61.3(2)(f).

<sup>33</sup> Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for the Nationwide Permits (2025).

<sup>34</sup> *Id.*

compliance with Iowa's narrative water quality standards.<sup>35</sup> As an alternative, Minnesota 401 certification requires compliance with the state's water quality standards, but also requires BMPs to be used.<sup>36</sup> 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."<sup>37</sup> 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."<sup>38</sup> The condition does not address protection of native mussel species likely to be impacted. IEC raised this issue in the prior certification of nationwide permits, but IDNR did not adjust the condition in response to IEC's comments.<sup>39</sup> 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.<sup>40</sup> The condition must specify how hydraulic dredging will be managed so as to prevent harm to the numerous native mussels under threat.

#### **IV. IEC Supports Conditions to Protect Outstanding Resources.**

The District has proposed regional conditions for the NWPs that are necessary to ensure protection of Iowa's waters. IEC has no expectation for the District to change its proposed conditions. However, if the District does not impose these conditions for any reason, IDNR must impose them to ensure compliance with Iowa's water quality standards.

Iowa provides an additional degree of protection for Outstanding Iowa Waters and Outstanding Natural Resource Value waters.<sup>41</sup> Iowa also has a variety of rare wetland types that could be difficult to replace. As a result, these high-value waters must be addressed 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

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<sup>35</sup> *Id.*

<sup>36</sup> Minn. R. 7001.1080 (2025) (incorporated by Minn. R. 7001.1470, subp. 2).

<sup>37</sup> 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>.

<sup>38</sup> Iowa Dept. of Natural Resources, Draft Section 401 Water Quality Certification for the Nationwide Permits (2025).

<sup>39</sup> IDNR, Responsiveness Summary (Dec. 14, 2020), at 18-19.

<sup>40</sup> See 90 Fed. Reg. at 26,100, 26,163.

<sup>41</sup> Iowa Admin. Code r. 567-61.3(2)(c), (d).

develop and cannot easily be restored once destroyed.”<sup>42</sup> Fens are a type of wetland that is fed by groundwater due to the water table existing at or near the ground surface.<sup>43</sup> Fens usually exist on poorly aerated substrate and consist of plants that can exist in wet and reducing conditions.<sup>44</sup> According to Michigan State University, prairie fens are a globally rare wetland most common in the Midwest and Northeast United States.<sup>45</sup>

In Iowa, one of the preserved fens is the Gray-Hart Preserve and it protects one of the state’s largest calcareous fens.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> Most of the organic material does not degrade, which traps the carbon.<sup>49</sup> 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.

## V. 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.

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<sup>42</sup> 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](https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> 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/>.

<sup>46</sup> 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/>.

<sup>47</sup> *Id.*

<sup>48</sup> 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>.

<sup>49</sup> 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>

Thank you for the opportunity to provide these comments and for your consideration of them. We would be happy to address any questions about the comments and requested changes. We look forward to hearing from you soon.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt  
General Counsel  
Iowa Environmental Council