





Clean Water Act Section 401 Water Quality Certifications



Important resources

- **Joint application form** is a joint state and federal application for a Section 404 Permit and a Section 401 Certification. All applicants for Section 401 Certification must complete and submit it to the Minnesota Pollution Control Agency (MPCA) and U.S. Army Corps of Engineers (USACE).
- **Minnesota stream quantification tool and debit calculator** is a spreadsheet-based tool designed to inform permitting and compensatory mitigation decisions related to streams by determining the loss or lift of a project based on existing use.
-  **Antidegradation Assessment Form (wq-wwprm1-35)**

401 Certifications for Section 404 Regional General Permits and Nationwide Permits

-  401 WQ Certification for RGP-003 and ORVW Map (wq-gen2-18a)
-  401 Water Quality Certification (2017) for nationwide permits (wq-gen2-18b)
-  401 Water Quality Certification (2021) for nationwide permits (wq-gen2-18d)

Overview of Section 401 certification

Section 401 of the Clean Water Act is designed to ensure that the federal government does not issue a permit or license for a project that will result in a violation of the state water quality standards set under the Clean Water Act in Waters of the United States (WOTUS). Minnesota's **state water quality standards** set conditions that must exist in order to protect drinking water, a healthy aquatic community, and recreational uses.

When a project that will impact WOTUS in Minnesota requires a federal Section 404 permit, the Minnesota Pollution Control Agency (MPCA) reviews the project under Section 401 to ensure that it will not violate the more restrictive water quality standards that the MPCA has established for that body of water. The 401 certification becomes an enforceable component of the associated federal license or permit issued under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act and Federal Energy Regulatory Commission (FERC) Projects.

The federal agency, U.S. Army Corps of Engineers (USACE), cannot issue a permit or license until the MPCA has either certified that the project impacting WOTUS will comply with state water quality standards, or waived its review of the project. This review gives the state a unique role in water quality protection.

A 401 Water Quality Certification does not deal with the Minnesota Wetland Conservation Act (WCA), which regulates activity such as drilling, filling, and excavation impacting wetlands and monitors the replacement and restoration of impacted wetlands with a goal of no net loss within Minnesota. The WCA program is overseen by the Board of Water and Soil Resources. The Section 401 Water Quality Program, administered by the MPCA, deals with impacts to WOTUS, but projects are also responsible for meeting state water quality standards in all Waters of the State (WOTS) as defined in Minn Stat. 115.01 Subd. 22 Waters of the state. Waters of the State include but are not limited to lakes, streams, and rivers, and irrigation within or bordering Minnesota, while Waters of the United States only include territorial seas used in commerce, tributaries, lakes and ponds, and adjacent wetlands.

Activities that require a 401 water quality certification

A project requires a Section 401 Certification from the MPCA if it meets all of the following four conditions:

1. **The project requires federal authorization.** This generally means that the project requires a federal permit or license under Section 404 of the Clean Water Act. Any project carried out by federal agencies are also included in this condition.
2. **There is potential for a discharge.** This may be a discharge of pollutants, dredge material, or an increase or decrease in flow.
3. **The potential discharge would affect “Waters of the United States”.**
4. **The discharge is from a point source.** The discharge must have a distinct and discernable source.

If a project meets these conditions and the potential discharge originates in Minnesota, the MPCA has the authority to certify, waive, or deny a Section 401 Certification. Once the project triggers the involvement of the MPCA, the project may be assessed for impacts to additional waters or wetlands protected by the state water quality standards or other rules, even if these waters are not directly affected by the discharge and are not directly subject to the federal Clean Water Act. Section 401 of the Clean Water Act does not apply to these additional waters, but state water quality standards must still be met in these additional, directly or indirectly impacted waters.

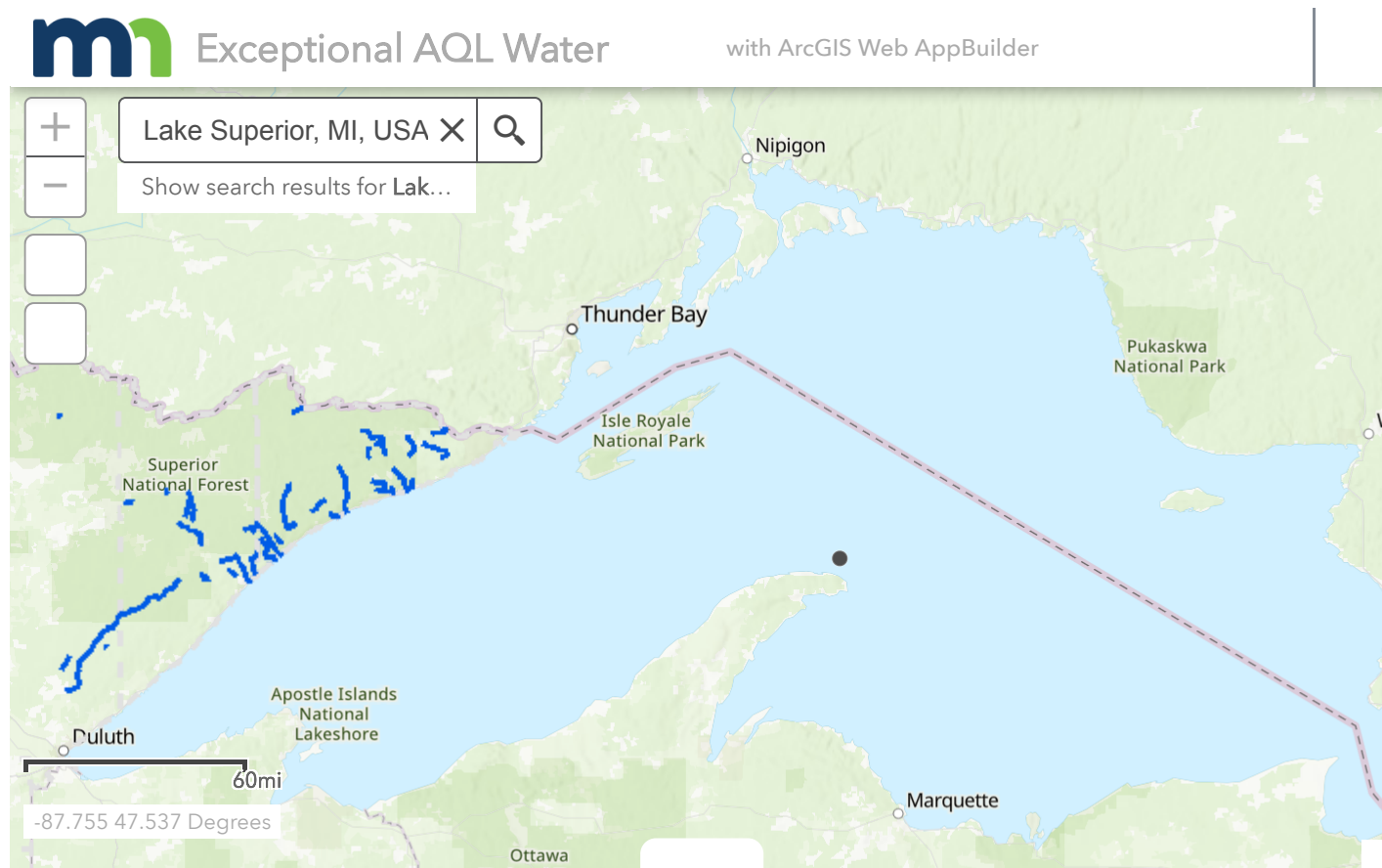
Many projects regulated under Sections 404 and 401 of the Clean Water Act are small in scale and involve common and predictable activities. The MPCA certifies these projects with General Certifications included with Section 404 General Permits. Individual 401 Certifications are not required for these projects.

Projects that are large in scale or are less common and predictable are regulated through Individual Permits. Examples of these projects include, but are not limited to: mining operations, dam removal, large bridges, large pipeline and transmission lines, projects in Outstanding Resource Value Waters, Exceptional Aquatic Life Use Waters, or trout waters, and most projects with over an acre of surface water impact.

Exceptional Aquatic Life Use Waters

Exceptional Aquatic Life Use Waters are highly sensitive waters that can be degraded by a slight change in their environment. These include cold waters, where an increase in water temperature or sedimentation will have serious negative impacts and destroy unique habitats. These waters are not necessarily of high cultural, recreational, or scientific value like ORVWs, but are much more sensitive to change. Many of these waters are river or creek segments throughout Minnesota. Projects that may impact Exceptional Aquatic Life Use Waters, directly or indirectly, by impacting stream hydrology, connectivity, or chemistry require an Individual 401 Water Quality Certification review.

[View larger map](#)



Outstanding Resource Value Waters (ORVWs)

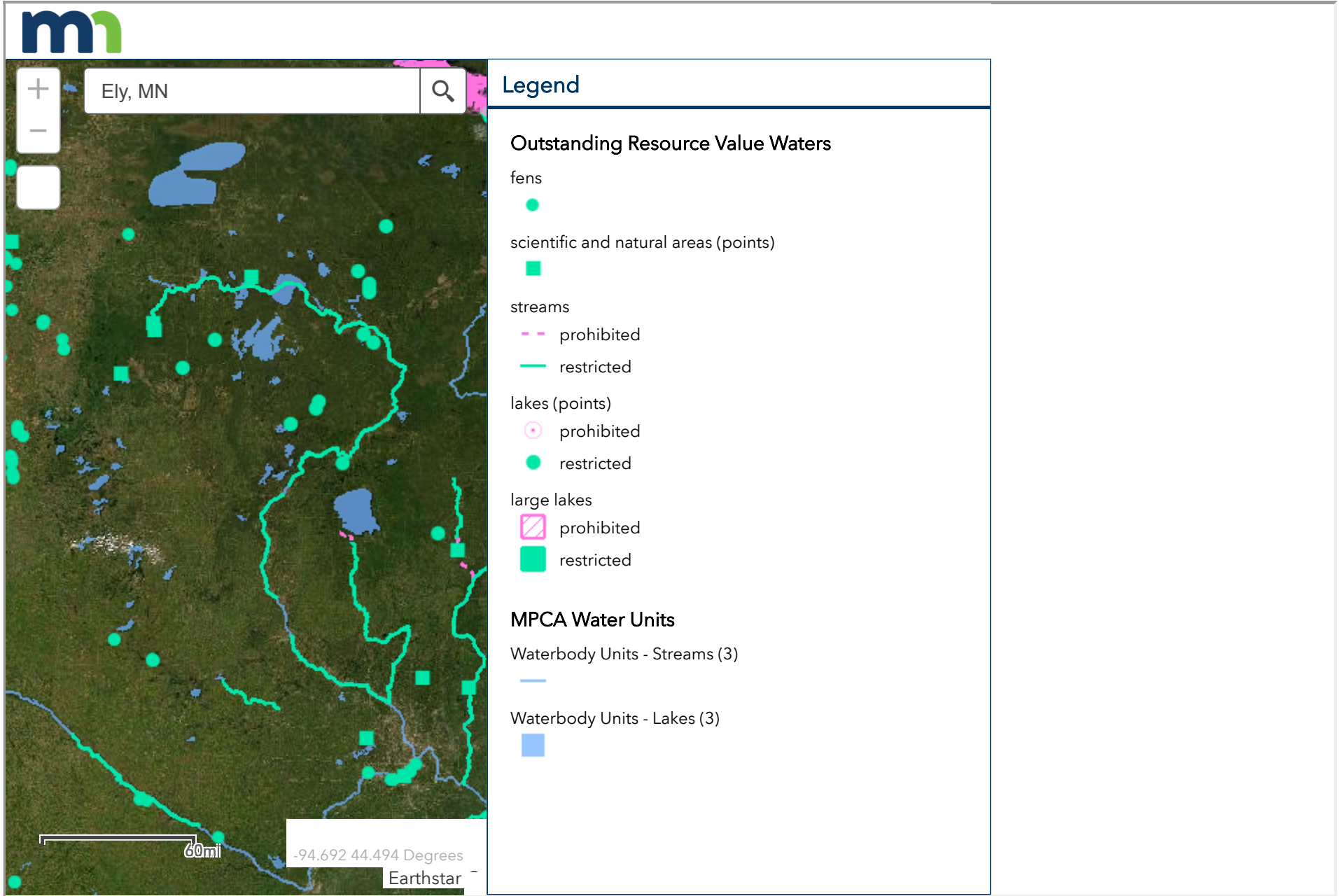


Outstanding Resource Value Waters classified as "prohibited" and "restricted" have extra levels of protection above other waters to protect their unique natures. These include high quality waters and waters that have exceptional recreation, cultural, aesthetic, or scientific value. Waters such as the Boundary Waters Canoe Area Wilderness, Voyageur's National Park, Lake Superior, and others are protected as ORVWs.

- All proposed projects in Minnesota waters designated as Prohibited ORVWs **must** apply for an Individual 401 Water Quality Certification review.
- Projects in Restricted ORVWs **may** also be required to apply for an Individual 401 Water Quality Certification review.

All Prohibited and Restricted ORVWs are indicated on the map below and a list of these waters can also be found in Minn. R. 7050.0335.

View larger map



Application process

At least 30 days in advance of submitting an application for Section 401 Certification, all applicants must request a pre-filing meeting with the MPCA. The MPCA may or may not accept the request for a meeting. Any time after 30 days, the applicants must submit a Joint Application to the MPCA and U.S. Army Corps of Engineers (USACE). The MPCA also requires the completion of the Antidegradation form to be submitted with the Application. The Antidegradation form is included under Important Forms and Links above. The USACE and MPCA will review the application for a Section 404 Permit and Section 401 Certification, respectively. Once the USACE receives and reviews an application, the USACE will issue a public notice.



When an application is received by the MPCA, the agency must act on it and issue a decision within a reasonable amount of time, not to exceed one year. The USACE sets the “reasonable amount of time” for the MPCA to complete the Certification process. Generally, the MPCA will act on an application within 75 days. If it appears that the MPCA decision may exceed 75 days, the MPCA must request an extension from the USACE to review and issue a 401 Certification. If the one year is exceeded without a decision, the project is considered waived and the MPCA has no further 401 authority over the project. Potential application outcomes are explained in the following section.

If the applicant’s project changes after a 401 Certification has been issued, the certification is void and the applicant must restart the 401 Certification process.

Outcomes

There are three potential outcomes for a Section 401 Certification application: waive, certify, or deny.

Waive: A waiver means that the state has waived its authority to review the project or impose conditions. The MPCA often waives review of small projects that are expected to have minimal environmental impacts. Under the Clean Water Act, the USACE can assume that the MPCA has waived its authority if the MPCA does not act within the designated reasonable amount of time specified by USACE, typically 75 days.

Certify: The MPCA may certify a project when there is reasonable assurance that the project will comply with state water quality standards for WOTUS. Most certifications include conditions that must be followed in order to ensure that state water quality standards are met. The applicant must follow the “avoid, minimize, mitigate” sequence by demonstrating that efforts were first made to avoid surface water impacts. For those remaining unavoidable impacts, the applicant must show how these impacts were minimized and finally, the applicant must demonstrate how these impacts will be mitigated in a fashion that replaces the existing and beneficial uses of the impacted waters. In addition to mitigation for the loss of surface waters, best management practices to prevent discharges, monitoring wetlands and waters through reporting may be required through the 401 Certification. The applicant must comply with these conditions, which are incorporated into the federal permit or license.

Deny: The MPCA may deny a certification, which disallows the federal agency to issue a related permit or license. This may mean the MPCA believes the project is unlikely to meet state water quality standards. If your project is denied, you may resolve issues noted by the MPCA and may be able to reapply for Section 401 Certification.

Contact us

Please contact the MPCA at 401Certification.pca@state.mn.us with any questions about Section 401 Water Quality Certification or the application process.

401 water quality certifications email list



Keep up with MPCA's decisions on 401 Water Quality Certification for mining and other complex projects.

Email:

Next