Public Notice

US Army Corps
of Engineers
St Paul District

ISSUED: June 18, 2010
EXPIRES: June 18, 2015

SECTION: 404-Clean Water Act

REFER TO: GP-10-R

FINAL ACTION - THE ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT REGULATORY BRANCH HAS ISSUED A GENERAL PERMIT, GP-10-R, FOR USE WITHIN THE EXTERIOR BOUNDARIES OF INDIAN RESERVATIONS IN MINNESOTA AND WISCONSIN, EXCEPT THE MOLE LAKE BAND OF SOKAOGON CHIPPEWA AND FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA RESERVATIONS.

1. PURPOSE OF THIS PUBLIC NOTICE.
The purpose of this public notice is to inform the public that we are issuing a general permit for use within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin, except the Mole Lake Band of Sokaogon Chippewa and Fond Du Lac Band of Lake Superior Chippewa Reservations.

2. BACKGROUND.
On February 8, 2010, the St. Paul District issued a public notice that described and requested public comment on its proposal (GP-10-R) to separate out the general permit portion of the existing GP/LOP-05-R permit, and issuance of a general permit with some minor additions. The GP-10-R replaces the GP portion of the now expired GP/LOP-05-R and is valid within the exterior boundaries of Federally-designated Indian Reservations in Minnesota and Wisconsin except for the Mole Lake Band of Sokaogon Chippewa, and the Fond du Lac Band of Lake Superior Chippewa. Activities within the Fond du Lac Band of Lake Superior Chippewa Reservation that require Section 404 authorization will be evaluated under a pending Letter of Permission (LOP) procedure or under a Standard (Individual) Permit process. Activities within the Mole Lake Reservation of the Sokaogon Chippewa Community that require Section 404 authorization will be evaluated under a Standard (Individual) Permit process.

In summary, GP-10-R reauthorizes the non-reporting categories of: 1) maintenance of existing structures that impact no more than 1/3 acre; and 2) oil/hazardous substances spill containment and cleanup. In addition, a new category of reporting activities has been added, which includes fish and wildlife enhancement and attraction activities, stream and wetland restoration activities and stream habitat improvement work, and wildlife scrapes and ponds. These activities may permanently fill no more than 1/3 acre of waters of the U.S. and may excavate and/or inundate no more than 1 acre of wetlands/waters.

Projects that are required to be government sponsored are outlined in the GP. The permit contains complete details, descriptions and conditions concerning GP-10-R.

Final action of the GP-10-R is attached to this notice and can be viewed on the St. Paul District internet web page at: http://www.mvp.usace.army.mil under the "Permits" section. Questions may be submitted through the web site or mailed to: Regulatory Branch, St. Paul District, Corps of Engineers, 180 Fifth Street East, St. Paul, Minnesota, 55101.

for Jon L. Christensen
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF THE ARMY PERMIT

Permittee: The general public on all lands within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin except the Mole Lake Reservation of the Sokaogon Chippewa Community and the Fond du Lac Band of Lake Superior Chippewa Reservation.

Permit No. GP-10-R

Issuing Office: St. Paul District
U.S. Army Corps of Engineers

Issuance Date: June 18,2010

Expiration Date: Five years after permit issuance.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "District" refers to the Army Corps of Engineers, St. Paul District which has jurisdiction over the permitted activity.

NON-REPORTING GENERAL PERMIT AUTHORIZATION: The general public is hereby authorized to perform work to maintain existing structures and fills and to contain and cleanup oil and hazardous substances spills as described on page 5 of this permit, in accordance with all terms and conditions of this permit, within the exterior boundaries of all Indian Reservations in Minnesota and Wisconsin except the Mole Lake Reservation of the Sokaogon Chippewa Community and the Fond du Lac Band of Lake Superior Chippewa Reservation.

REPORTING GENERAL PERMIT AUTHORIZATION:
Effective upon the issuance date above, the general public must request GP-10-R authorization from the District for work that requires Clean Water Act Section 404 authorization and falls within the categories described on pages 5 through 9 of this permit in accordance with all terms and conditions on lands within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin, except the Mole Lake Reservation of the Sokaogon Chippewa Community and the Fond du Lac Band of Lake Superior Chippewa Reservation.

The categories covered by this authorization include fish and wildlife enhancement and attraction activities, stream and wetland enhancement and restoration activities, and wildlife ponds and scrapes.

IMPORTANT: All GP-10-R authorizations are subject to the standard and general conditions specified below. In addition, the District

may impose in its Reporting General Permit authorization project-specific special conditions which will be specified in the District's authorization for the project. Refer to the attached GP-10-R Terms and Procedures for a description of non-reporting GP and reporting GP procedures, eligible activities, conditions, exclusions and application instructions.

PROJECT DESCRIPTION AND LOCATION: GP-10-R applies to certain discharges of dredged and/or fill material into waters of the United States, including wetlands, as described herein, in the State of Minnesota and Wisconsin within the exterior boundaries of Indian Reservations, except the Mole Lake Reservation of the Sokaogon Chippewa Community and the Fond du Lac Band of Lake Superior Chippewa Reservation.

General Conditions:

1. The time limit for completing work authorized by the GP-10-R ends upon the expiration date of GP-10-R or two years after the date of the Corps authorization of the work under GP-10-R, whichever occurs sooner. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least three months before the expiration date is reached.

2. You must maintain the activity authorized by GP-10-R in good condition and in conformance with the terms and conditions of this permit. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by GP-10-R, you must immediately stop work and notify this office of what you have found. We will initiate the Federal, tribal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of GP-10-R.

5. Refer to the GP-10-R Standard Conditions Attachment.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization:

a. GP-10-R does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. GP-10-R does not grant any property rights or exclusive privileges.

c. GP-10-R does not authorize any injury to the property or rights of others.

d. GP-10-R does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination by this office that a confirmation of authorization is not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. Reevaluation of Decision. This office may reevaluate its decision on an authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. The applicant fails to comply with the terms and conditions of this general permit.

b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is

appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and upon failure to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

6. This office may also reevaluate its decision to issue GP-10-R at any time circumstances warrant. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Tamara Cave

6-18-10

By Jon L. Christensen
Colonel, Corps of Engineers
District Engineer

DATE

GP-10-R TERMS AND PROCEDURES

A. NON-REPORTING GP

The following describes the Section 404 non-reporting general permit authorizations implemented by the St. Paul District as part of GP-10-R.

1 ACTIVITIES EXCLUDED BY THE NON-REPORTING GP:

This non-reporting GP does not authorize maintenance activities that are in or within 300 feet of areas of established dormant or growing wild rice beds or harvest areas.

This non-reporting GP does not authorize any maintenance activities that are in or within 300 feet of a calcareous fen.

This non-reporting GP does not authorize any maintenance activities that are part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.

These exclusions to not apply to A2b below.

2. ACTIVITIES AUTHORIZED BY THE NON-REPORTING GP (unless excluded in paragraph A1):

a. Maintenance activities. Discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill that impact not more than one-third (1/3) of an acre of wetland/water area. Minor deviations, up to the 1/3 acre impact limit, are allowed where necessary to conform to modern construction practices, materials, construction codes, or safety standards. Discharges to repair or replace structures destroyed by storms, floods, fire or other discrete events are included, provided they are commenced or under contract to commence within two years of the date that the damage occurred.

b. Oil Spill/Hazardous Substances Cleanup. Activities required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3. In addition, if a Regional Response Team exists in the area, they must concur with the proposed containment and cleanup action plan. Discharges for such containment and cleanup activities are authorized without delay by this general permit; however, the appropriate tribal government and the District shall be informed of any such discharges as soon as practical.

All practicable steps to avoid and minimize impacts to wetlands and restore impacted wetlands shall be implemented. See Standard Condition #25 below.

3. APPLICATION OF THE NON-REPORTING GP:

An activity authorized by this non-reporting GP may commence when project proponents have carefully confirmed that the activity will be conducted in compliance with all of the terms and conditions of GP-10-R, including the standard and general conditions. No application to the Corps is required. Persons proposing to do work should note that conditions of the GP require that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practical. Activities that would adversely affect Federal Endangered plant or animal species or certain cultural/archaeological resources are not authorized by GP-10-R. Information about Federal Endangered species may be obtained by contacting the U. S. Fish and Wildlife Service. Information concerning cultural resources may be obtained by contacting the State Historic Preservation Office and the appropriate tribal government. Project proponents are encouraged to contact these agencies early in project planning because doing so can help avoid violations of Federal law and potentially lengthy project delays. Persons performing work should be aware that Federal regulations concerning endangered species and cultural resources may apply to their projects whether or not the work requires a Corps permit. All work must be conducted in full compliance with all of the terms and conditions of GP-10-R.

B. REPORTING GP

The following describes the Section 404 reporting general permit authorization procedures implemented as part of GP-10-R by the St. Paul District.

1. EXCLUDED ACTIVITIES BY THE REPORTING GP:

This reporting GP does not authorize any activities in or within 300 feet of a calcareous fen, or that are in or within 300 feet of areas of established dormant or growing wild rice beds or harvest areas. This Reporting GP also does not authorize any activities in sedge meadow and forested wetlands.

This reporting GP does not authorize any maintenance activities that are part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.

2. ACTIVITIES ELIGIBLE FOR AUTHORIZATION UNDER THE REPORTING GP (unless excluded in paragraph B1 above):

Discharges of dredged/fill material, for a single and complete project, that would result in no more than one third (1/3) acre of permanent fill,

and/or no more than 1.0 (one) acre of wetland/water area impacted by excavation or inundation, associated with a discharge, and that comply with all GP-10-R conditions, may be authorized under this GP.

Eligible activities include:

a. Fish and Wildlife Enhancement and Attraction Activities. Section 404 discharges for activities such as fish cribs, rock or gravel fish spawning reefs, tree drops, and other minor activities that propagate fish and wildlife habitat.

The above category does not require agency or tribal sponsorship, but would require tribal approval.

b. Stream and Wetland Restoration Activities, and Stream Habitat Improvement Activities. This GP does not cover any conversion of sedge meadow and forested wetland to other wetland types. It covers Section 404 activities in waters of the United States associated with the restoration and enhancement of wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration, enhancement and habitat improvement of non-Section 10 streams and open water areas on: (i) non-Federal public lands and private lands, in accordance with the terms and conditions of a binding wetland enhancement, restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service, Natural Resources Conservation Service (NRCS), Bureau of Indian Affairs (BIA)s, or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulation; or (ii) any Federal land; or (iii) by a state agency on any public or private land; or (iv) by tribal government on tribal, public or private land. This GP cannot be used to authorize activities for the conversion of natural streams to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This GP cannot be used to authorize channelization of a stream and does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. However, this GP may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. For example, this GP may authorize the creation of an open water impoundment in an emergent wetland, provided the emergent wetland is replaced by creating that wetland type in the adjacent uplands. This activity must be sponsored by a federal, state, county, or tribal agency, and must have tribal approval.

c. Wildlife Scrapes and Ponds.

Discharges of dredged or fill material for the construction of shallow wildlife scrapes, or wildlife ponds no deeper than 5 feet. These excavations shall be constructed with irregular shorelines and shallow sideslopes (e.g. 8-foot lateral to 1-foot rise or greater). All excavated spoil material must be removed to an upland location unless authorized as part of a low-head dike or berm if required as part of the design. The primary purpose of this activity must be to improve wildlife habitat, and is not appropriate in areas with high quality wetlands. This GP does not authorize the discharge of fill material for the construction of wildlife scrapes of ponds in forested wetlands, sedge meadows or calcareous fens. This activity must be sponsored by a federal, state, county, or tribal agency, and must have tribal approval.

Categories b and c must be agency sponsored and tribal approved as specified.

3. HOW TO APPLY FOR A REPORTING GP AUTHORIZATION UNDER GP-10-R:

An application to the Corps is required for all reporting GPs. Applicants may use the Federal Department of the Army permit application form available from Corps offices. Projects are not authorized until the Corps has issued a permit letter specifically for the project. Applicants are encouraged to help speed the Corps' evaluation and increase the chance of receiving a favorable interagency review and authorization by including information with their application that clearly shows that the proposed work is the least environmentally damaging practicable way to perform the work. The Corps must generally deny any permit request unless the applicant demonstrates, and the Corps evaluation confirms, that the work proposed is the least environmentally damaging practicable means to accomplish the project purpose and that impacts to wetland/water areas cannot reasonably be avoided or further minimized. The Corps must also deny authorization for any regulated activity that the Corps determines is contrary to the public interest.

Applicants are advised that activities that adversely affect Federal Endangered plant or animal species or cultural resources are not authorized under GP-10-R. Information about Federal Endangered species may be obtained by contacting the U. S. Fish and Wildlife Service. Information concerning cultural resources may be obtained by contacting the State Historic Preservation Office and the appropriate tribal government. Applicants are encouraged to contact these agencies early in the planning process because doing so can help avoid later and potentially lengthy delays in completing the Corps permit evaluation procedures.

All authorized work must be conducted in compliance with all of the terms and conditions of GP-10-R.

4. EVALUATION PROCEDURES UNDER THE REPORTING GP.

The District will review each application for compliance with the GP-10-R general conditions. In all cases, the District will transmit a copy

of the application materials via facsimile device or the U.S. mail to the appropriate tribal government and provide that tribal government a 30-calendar-day period in which to review and comment on the project. At the end or the 30-day period (or less if a favorable tribal response is received) the District will complete its review, considering all comments received, and prepare an abbreviated 404(b)(1) analysis and environmental assessment upon completion of its analysis and determine if the District will issue a letter authorizing the proposed work, provided the proposed work is not contrary to the public interest. Projects that fail to meet these criteria will be denied authorization.

C. GP-10-R, OTHER PROVISIONS

1. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES. All Reporting GP applications will be coordinated with the appropriate Indian Tribal governments. The Indian Tribe's views and the Federal trust responsibility will be considered in the District's evaluation.

2. PUBLIC/TRIBAL/INTERAGENCY COORDINATION PROCESS. All Reporting GP applications will be coordinated with the affected tribal government as noted in paragraph B.4. of GP-10-R Terms and Procedures in completing its evaluation of the proposed activity.

3. PROJECT-SPECIFIC GP-10-R CONDITIONS. The District evaluation will identify any need for special conditions to minimize adverse impacts and/or protect the public interest.

4. FORM AND CONFIRMATION OF AUTHORIZATION. Reporting GP authorization will be confirmed by the District sending the project proponent a permit letter. The letter will identify any required special conditions.

5. ENDANGERED SPECIES AND CULTURAL RESOURCES. GP-10-R does not affect the District responsibility to ensure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act and Section 106 of the National Historic Preservation Act. No Corps GP is valid for projects that do not comply with these Acts.

6. PERIODIC INTERAGENCY REVIEW. The St. Paul District will conduct an interagency review to evaluate the performance of GP-10-R after it has been in effect for one year. The St. Paul District may use its authority to modify, revoke, suspend or propose any Section 404 authorization after the annual review or at any other time it determines that circumstances concerning the public interest warrant such action.

D. GP-10-R STANDARD CONDITIONS ATTACHMENT

GP-10-R authorizations are subject to the following standard conditions, as applicable. The following general conditions must be followed in order for any GP-10-R authorization to be valid:

1. Case-by-case conditions. The activity must comply with any project-specific special conditions which may have been added by the District. Such conditions will be specifically identified in any GP issued for the project.

2. Mitigation/Sequencing. Discharges of dredged or fill material into waters of the United States **must be minimized or avoided to the maximum extent practicable** at the project site (i.e. on-site)

3. Section 401 Water quality certification determination. The EPA has granted 401 water quality certification for GP-10-R except for within the boundaries of the Grand Portage Band of Lake Superior Chippewa. The Grand Portage Band has assumed 401 water quality authority from the EPA. The Grand Portage Band issued a resolution approving Water Quality Certification on June 15, 2010 and has determined that the GP-10-R will not violate tribal water quality standards.

4. Suitable material. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material discharged must be free from toxic pollutants other than trace amounts (see Section 307, Clean Water Act).

5. Proper maintenance. Any structure or fill authorized shall be properly maintained, including maintenance required to ensure public safety.

6. Erosion and siltation controls. Appropriate erosion and siltation 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 must be permanently stabilized at the earliest practicable date.

Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion. If coffer dams are constructed, they shall be maintained so as to prevent erosion into the water. If earthen material is used for coffer dam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion.

7. Removal of temporary fills. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

8. Endangered Species.

a. No activity is authorized which is likely to 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, or which is likely to destroy or adversely modify the critical habitat of such species.

Non-federal permittees shall notify the District if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

b. Authorization of an activity under GP-10-R does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

9. Historic properties, cultural resources. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the District in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.

10. Spawning areas. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

11. Obstruction of high flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

12. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

13. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

14. Navigation. No activity may cause more than a minimal adverse effect on navigation.

15. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

16. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

17. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Wild and Scenic Rivers. No 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 effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

19. Water quality standards. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal or Tribal water quality and effluent standards on a continuing basis.

20. Preventive measures. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.

21. Disposal sites. If dredged or excavated material is placed on an upland disposal sight (above the ordinary high-water mark), the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal sight, must be fully completed prior to the placement of any dredged material.

22. Cultural resources. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the Tribal Historic Preservation Officer and the Corps must be contacted for further instruction.

23. Water intakes/activities. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

24. Spill contingency plan. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the Duty Officer at 1-800-422-0798 in Minnesota, or at 1-800-943-0003 in Wisconsin, and the National Response Center at telephone number 1-800-424-8802, or web page www.nrc.uscg.mil.

25. Site restoration and equipment standards for oil spill/hazardous substance cleanup. Disturbed areas shall be stabilized immediately after construction to prevent erosion. Re-vegetation of site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and soils removed for project construction shall be stockpiled separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used if identified in the cleanup action plan. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Re-vegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

Excavation or significant disturbance to wetlands may require a site specific restoration plan as required by the Corps to minimize long term impacts to wetland functions and values.

26. Other permit requirements. No Corps GP-10-R authorization eliminates the need for other local, tribal, state, or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

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GRAND PORTAGE RESERVATION TRIBAL COUNCIL

Norman W. Deschampe - Chairman • John Morrin - Vice Chairman • Dean Deschampe - Secretary/Treasurer
Wm "Bill" Myers - Councilman • Lorraine Wipson - Councilwoman

RESOLUTION NO. 26

GRANTING CONDITIONAL 401 CERTIFICATION FOR THE RE-ISSUANCE OF US ARMY CORPS OF ENGINEERS GENERAL PERMIT (GP-10-R) AND FOR THE SEPARATION OF THE LETTER OF PERMISSION (LOP-10-R)

The Grand Portage Reservation Tribal Council, on behalf of the Grand Portage Band of Chippewa, enacts the following resolution:

WHEREAS, the governing body of the Grand Portage Band of the Minnesota Chippewa Tribe is the Reservation Business Committee (also known as the Reservation Tribal Council ("RTC")) pursuant to Article III, Section 2 of the Minnesota Chippewa Tribe Constitution; and

WHEREAS, the Grand Portage Band of the Minnesota Chippewa Tribe ("Band") is a federally recognized Indian tribe possessing the inherent sovereign authority of an independent government; and

WHEREAS, the RTC has determined that water pollution endangers the health and welfare of Grand Portage members and residents of the Grand Portage Reservation, and adversely impacts tribal treaty fishing rights as well as cultural, religious, domestic, recreational, agricultural and other uses of the Reservation water resources;

WHEREAS, as an exercise of the Band's inherent authority, the RTC enacted the Grand Portage Band of Chippewa Water Resources Ordinance ("Ordinance") on July 25, 2001 and amended it on January 15, 2004 to protect the waters of the Grand Portage Reservation; and

WHEREAS, under the Ordinance, the RTC is empowered to act as the Water Resources Board ("Board") created by the Ordinance; and

WHEREAS, in its capacity as Board, the RTC has taken all steps required under the Ordinance and federal law to grant conditional 401 certification for the proposed separation of the LOP and re-issuance of the GP, a copy of which is attached to this Resolution; and

WHEREAS, in its capacity as Board, and after consultation with the Band's Environmental Department, the RTC finds that conditional certification of the LOP-10-R is necessary to protect (a) the public health and welfare of the Band, its members, and others living on its Reservation, and (b) the present and future use of Reservation waters for public and

P.O. Box 428 Grand Portage, Minnesota 55605 (218) 475-2277 or 475-2239 Fax: (218) 475-2284

GRAND PORTAGE R. T. C.

private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, cultural, religious, commercial, industrial and other legitimate uses;

NOW, THEREFORE, BE IT RESOLVED, that the RTC, in its capacity as Board, adopts the attached conditional certification of the LOP-10-R, and directs the Environmental Department to submit the conditional certification of the LOP-10-R to the US ACE for inclusion in the final LOP-10-R and GP-10-R permit in accordance with the Federal Clean Water Act.

CERTIFICATION

We do hereby certify that the foregoing resolution was duly adopted by a vote of 3 for, 0 against, 0 silent, at a Special meeting of the Reservation Tribal Council, a quorum present, held on the 15th day of June, 2010.

Norman W. Deschampe

Norman W. Deschampe, Chairman

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 15 2010

REPLY TO THE ATTENTION OF:

WW-16J

Colonel Jon Christensen
District Engineer,
St. Paul District Corps of Engineers
Stevens Point Office
1314 Contractor Boulevard
Plover, Wisconsin 54467

Re: Clean Water Act Section 401 Certification for LOP-10-R

Dear Colonel Christensen:

The U.S. Environmental Protection Agency has reviewed the above referenced public notice, dated January 29, 2010. The purpose of this public notice is to propose to separate the general permit portion of the existing GP/LOP-05-R permit, and re-issue the letter of permission (LOP) evaluation procedures with no changes. This certification is applicable to all Native American reservations in Minnesota and Wisconsin with the exception of the Mole Lake Band of Sokaogon Chippewa, the Fond du Lac Band of Lake Superior Chippewa and the Grand Portage Band of Lake Superior Chippewa.

This LOP provides for abbreviated Section 404 evaluation procedures for activities that would impact less than two acres of water/wetland area. EPA concurs with the Corps of Engineers' conclusion that GP/LOP-05-R and GP/LOP-98-R have performed acceptably and hereby re-issue Section 401 Certification with no additional conditions.

This action does not exempt the applicant from the responsibility of complying with all other applicable Tribal, State and Federal requirements. If you have any questions, or if we can be of further assistance, please contact Janice Cheng of my staff, at (630) 483-1184 or cheng.janice@epa.gov.

Sincerely,

for Tinka G. Hyde
Director, Water Division

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cc: Chris Holm, Bois Forte Band of Chippewa
Perry Bunting. Mille Lacs Band of Chippewa
Brad Frazier, Prairie Island Community
Ken McBride, Red Lake Band of Chippewa
Levi Brown, Leech Lake Band of Ojibwe
Scott Walz, Shakopee Mdewakanton Sioux
Maggy Harp, Lower Sioux Indian Community
Dallas Ross, Upper Sioux Community
Monica Hedstrom, White Earth Band of Chippewa
Ed Kolodziejski, Bad River Band of Lake Superior Chippewa
Jim Snitgen, Oneida Tribe of WI
Nate Guldan, Forest County Potawatomi Community
Laura Armagost, Red Cliff Band of Lake Superior Chippewa
Leslie Billy, ST. Croix Chippewa Indians of Wisconsin
Dan Tyrolt, Lac Courte Oreilles Conservation Dept.
Luke Hennigan, Stockbridge-Munsee Community
Dee Mayo, Lac Du Flambeau Band of Chippewa
Randall Poelma, Ho-Chunk Nation
Gary Schuettpelz, Menominee Inidan Tribe of WI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 15 2010

REPLY TO THE ATTENTION OF:
WW-16J

Colonel Jon Christensen
District Engineer,
St. Paul District Corps of Engineers
Stevens Point Office
1314 Contractor Boulevard
Plover, Wisconsin 54467

Re: Clean Water Act Section 401 Certification for GP-10-R

Dear Colonel Christensen:

The U.S. Environmental Protection Agency has reviewed the above referenced public notice, dated February 8, 2010. The purpose of this public notice is to propose to separate the letter of permission portion of the existing GP/LOP-05-R permit, and re-issue the general permit (GP) evaluation procedures with no changes. This certification is applicable to all Native American reservations in Minnesota and Wisconsin with the exception of the Mole Lake Band of Sokaogon Chippewa, the Fond du Lac Band of Lake Superior Chippewa and the Grand Portage Band of Lake Superior Chippewa.

This GP provides for the discharge of fill material into Section 404 waters for maintenance of existing structures and fills that impact no more than 1/3 acre, and oil/hazardous substances spill containment and cleanup. EPA concurs with the Corps of Engineers' conclusion that GP/LOP-05-R and GP/LOP-98-R have performed acceptably and hereby re-issue Section 401 Certification with no additional conditions.

This action does not exempt the applicant from the responsibility of complying with all other applicable Tribal, State and Federal requirements. If you have any questions, or if we can be of further assistance, please contact Janice Cheng of my staff, at (630) 483-1184 or cheng.janice@epa.gov.

Sincerely,

for Tinka G. Hyde
Director, Water Division

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Grand Portage Conditional Certification for GP-10-R and LOP-10-R

In accordance with the Clean Water Act § 404, 40 C.F.R. § 230, the U.S. Army Corps of Engineers ("US ACE") is proposing to separate the general permit from the letter-of-permission ("LOP") evaluation procedures with no changes from the LOP-05-R except to remove the five-year limit. The LOP-10-R would continue to authorize discharges of dredged and/or fill material into waters of the United States, including wetlands.

The Grand Portage Band of Lake Superior Chippewa (the "Band") is a federally recognized Indian tribe and has Treatment-As-a-State for purposes of enforcement of federal water quality standards on the Band's Reservation in northern Minnesota. Therefore, in accordance with Section 401 of the Clean Water Act, the Grand Portage Water Quality Standards ("Water Quality Standards"), and the Grand Portage Water Resources Ordinance (as amended, the "Water Resources Ordinance"), the Grand Portage Environmental Resources Board ("Board") has examined the proposed re-issuance and separation of the GP-10-R and LOP-10-R and determined that there is reasonable assurance that it will not violate applicable water quality standards.

The Board has also determined that certain additional conditions are necessary to protect the following: (a) the public health and welfare of the Band, its members, and others living on the Band's Reservation; and (b) the present and future use of Reservation waters for public and private water supplies; propagation of fish, aquatic life, and wildlife; domestic and recreational purposes; and for agricultural, cultural, religious, commercial, industrial, and other legitimate uses. Accordingly, the following conditions will apply to discharges made under the LOP-10-R into Waters of the Grand Portage Reservation (as defined in the Water Resources Ordinance) until June 30, 2015:

1. The LOP-10-R authorizes discharges of dredged and/or fill material into waters of the United States, including wetlands, during activities that may occur within the exterior boundaries of the Grand Portage Reservation in accordance to the Grand Portage Land Use Ordinance. The LOP-10-R regulates discharges of dredged and/or fill material into waters of the United States, including wetlands, for a single complete project that would result in the filing, draining, or inundating less than 2.0 acres of wetlands/water area, that comply with LOP-10-R conditions. This Certification does not authorize impacts to cultural, historical, or archeological features or sites, or properties that may be eligible for listing as such.

2. All discharges of dredged and/or fill material authorized by the LOP-10-R must comply with the Water Quality Standards and Water Resources Ordinance, as well as Applicable Federal Standards (as defined in the Water Resources Ordinance). As such, appropriate steps must be taken to ensure that petroleum products or other chemical pollutants are prevented from entering the Waters of the Reservation (as defined in the Water Resources Ordinance). All spills must be reported to the appropriate emergency-management agency, and measures must be taken to prevent the pollution of the Waters of the Reservation, including groundwater.

3. A copy of the application required for the LOP must be submitted to the Board at least 30 days in advance of sending the application to US ACE. The Board may require monitoring of discharges as determined on a case-by-case basis. If the Board determines that a monitoring plan is necessary, the monitoring plan must be prepared and incorporated into the application before it is submitted to the US ACE. The Plan should be sent to:

   Grand Portage Environmental Resources Board
   P.O. Box 428
   Grand Portage, MN 55605

   Copies of the Notice of Termination required under the LOP must be submitted to the Board at the address above at the same time they are submitted to the US ACE.

4. If requested by the Grand Portage Environmental Department, the permittee must provide additional information necessary for a case-by-case eligibility determination to assure compliance with the Water Quality Standards and any Applicable Federal Standards.

5. Discharges that the Board has determined to be or that may reasonably be expected to be contributing to a violation of Water Quality Standards or Applicable Federal Standards are not authorized by this Certification.

6. The Board retains full authority provided by the Water Resources Ordinance to ensure compliance with and to enforce the provisions of the Water Resource Ordinance and Water Quality Standards, Applicable Federal Standards, and these Certification conditions.

7. Appeals related to Board actions taken in accordance with any of the preceding conditions may be heard by the Grand Portage Tribal Court.

As provided by the Water Resources Ordinance, any interested party may request that a public hearing be scheduled regarding the Board's decision to grant conditional certification to LOP-10-R. Such a request must be directed to the following address within 30 days of this notice:

Grand Portage Environmental Resources Board
P.O. Box 428
Grand Portage, MN 55605

Electronic versions of the proposed permit extension fact sheet are available at the US ACE's Web site at http://www.mvp.usace.mil/regulatory/. Questions regarding the LOP-10-R can also be directed to the US ACE District Office at Department of the Army, St. Paul District, Corps of Engineers, Sibley Square at Mears Park, 190 5th St. East, Ste. 401, St. Paul, MN 55101-1638. The US ACE St. Paul District contact for the LOP-10-R is Tamara Cameron at telephone number (651) 290-5197 or e-mail at <Tamara.E.Cameron@usace.army.mil>.