US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: August 30, 2010
SECTION: 404-Clean Water Act

REFER TO: LOP-10-R (2009-05025-CKK)

FINAL ACTION - THE ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT REGULATORY BRANCH HAS ISSUED A LOP-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 announce the issuance of new letter of permission (LOP) Coordination and Categories. This new LOP (LOP-10-R) is attached.

2. BACKGROUND.
On January 29, 2010, the St. Paul District issued a public notice that described and requested public comment on its proposal (LOP-10-R) to separately issue the general permit portion and the letter of permission procedure portion of the previous GP/LOP-05-R permit. The LOP portion of the existing permit will be replaced with the LOP-10-R and will be 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. A copy of the Coordination and Categories of the LOP-10-R is attached and is also posted on the District's Internet web site at the address below:

http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=681.

LOPs are a type of permit issued through a streamlined procedure which includes coordination with specified agencies, and preparation of an environmental assessment, but without publication of a public notice. LOPs may be used in those cases subject to section 404 of the Clean Water Act after:

- The Corps, in consultation with Federal and state fish and wildlife agencies; the Regional Administrator, Environmental Protection Agency; the water quality certifying agency, and, if appropriate, the state Coastal Zone Management Agency,

develop a list of categories of activities proposed for authorization under LOP procedures;

- Issuance of a public notice advertising the proposed list of categories and the LOP procedures, requesting comments and offering an opportunity for public hearing; and
- A 401 certification has been issued or waived by EPA and tribes with 401 certification authority.

The Corps consulted with all Federally-designated Indian Tribes with Reservations in Minnesota and Wisconsin, Federal and state fish and wildlife agencies; the Regional Administrator, Environmental Protection Agency; the water quality certifying agencies, and the state Coastal Zone Management Agency, to develop and coordinate procedures and a list of categories of activities for use in the LOP process.

In summary, LOP-10-R provides for a streamlined Section 404 evaluation process for almost all activities that would impact less than two acres of wetland/water areas. As described in the Coordination and Categories, certain activities require a Section 401 water quality certification from the U.S. Environmental Protection Agency. The Grand Portage Band of Lake Superior Chippewa has Section 401 certification for LOP-10-R activities within their Lake Superior reservation boundaries. The document contains complete details, descriptions and conditions concerning LOP-10-R. A conditional Section 401 Water Quality Certification has been issued by the Environmental Protection Agency and the Grand Portage Band of Lake Superior Chippewa for activities authorized by the LOP using the Coordination and Categories attachment.

As provided by LOP-10-R, all notices of LOP-10-R permit applications will be posted on the District web site for public and interagency review.

Questions on this notice may be submitted through the web site or mailed to: Regulatory Branch, St. Paul District, Corps of Engineers, 180 Fifth Street East, Suite 700 St. Paul, Minnesota, 55101-1678.

for Tamara Cameron

Michael J. Price
Colonel, Corps of Engineers
District Engineer

LOP-10-R
COORDINATION AND CATEGORIES

A. GENERAL INFORMATION

Project proponents should carefully read all of the information below, with special attention to the General Conditions section. These provisions and conditions apply to all LOP-10-R authorizations.

LOP-10-R applies to projects located within the external 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.

Reservations participating in this LOP are: Bad River Band of Lake Superior Chippewa; Ho-Chunk Nation of Wisconsin, Lac Courte Oreilles Band of Lake Superior Chippewa, Menominee Indian Tribe of Wisconsin, Forest County Potawatomi, Oneida Nation of Wisconsin, Bois Forte Band of Chippewa, Red Cliff Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, Stockbridge-Munsee Community, Leech Lake Band of Ojibwe, St. Croix Band of Chippewa Indians, Lower Sioux Indian Community, Upper Sioux Community, Mille Lacs Band of Ojibwe, White Earth Band of Ojibwe, Prairie Island Indian Community, Shakopee Mdewakanton Sioux Community.

1. EXCLUDED ACTIVITIES:
a. This LOP-10-R does not authorize any activities in or within 300 feet of a calcareous fen.

b. This LOP-10-R does not authorize any 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 LOP-10-R AUTHORIZATION (unless excluded in paragraph A1. above):
Discharges of dredged/fill material, for a single and complete project that would result in filling, draining, or inundating less than 2.0 (two) acres of wetland/water area, that comply with all LOP-10-R conditions, may be authorized under this LOP-10-R.

3. REQUIREMENT: LOP-10-R authorizations for activities in waterbodies that are designated as impaired through the Clean Water Act Section 303(d) process, and in wetlands adjacent to these waters, are not valid until the applicant applies for and obtains an individual Section 401 Water Quality Certificate or waiver from the EPA unless a Tribe has obtained 401 Certification authority from EPA. Refer to LOP-10-R Other Provisions number 7 for additional information.

4. HOW TO APPLY FOR AN AUTHORIZATION UNDER LOP-10-R:
An application to the District is required for all LOP-10-R authorizations. Applicants may use the Federal Department of the Army application form available from Corps offices or the St. Paul District web site at: www.mvp.usace.army.mil/regulatory.

Upon receipt of a permit application, the District will review the information to determine the completeness of the application and eligibility for LOP-10-R. A complete application consists of the following information:
a. **Name** and address of the applicant and authorized agent.
b. A description of the proposed activity. The description should be of sufficient detail to provide a thorough understanding of the project so that it can be explained to other agencies and the general public.
c. The application should identify all activities that affect waters of the U.S. and that are reasonably related to the project for which an application has been submitted (see definition of Single and Complete Project under Definitions, below).
d. Name and address of adjacent landowners.
e. The application should identify the name of the watercourse or wetland impacted and the specific location of the impact(s).
f. A description of any work already completed as part of the project in waters of the U.S.
g. Signature of Applicant or authorized agent.
h. Drawings, plans, or sketches of sufficient detail to understand the existing and proposed conditions at the site. Detailed engineering plans and specifications may be required.
i. In some cases, the District may require a wetland delineation prepared in accordance with the 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL and the Regional Supplement before the application will be considered complete.
j. Describe any proposed mitigation, or indicate none is proposed.

Applicants are encouraged to obtain the services of professional consultants in planning projects and preparing applications, wetland determinations- delineations, and compensatory mitigation plans. The District does not endorse any consultants; however, the District maintains a list that is available on its website, of consultants that have asked to be listed as being available for hire to perform such services.

The District may request additional information from the applicant in order to complete the public interest review. This information is not required for a complete application, but may be necessary in order for the District to make a decision on the permit application. The additional information could include, but is not limited to, an alternatives analysis, dredged material testing plan, and/or a compensatory mitigation plan, for example.

Once an application has been determined to be complete, the District will conduct its evaluation of the permit application as described in the following paragraphs.

5. EVALUATION PROCEDURES UNDER THE LOP-10-R. The District will review each application for compliance with the LOP-10-R general conditions. In all cases, the District will transmit a copy of the application materials via facsimile or by U.S. Postal Service 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 a 404(b)(1) analysis, an environmental assessment, and a public interest review. Upon completion of its analysis and determination the District will issue a Letter of Permission authorizing the proposed work if the determination concludes the project is not contrary to the public interest. Appropriate compensatory mitigation may be required in accordance with paragraph B2 below.

B. LOP-10-R, OTHER PROVISIONS

1. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES. All LOP-10-R permit 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. COMPENSATORY MITIGATION REQUIREMENTS: Compensatory mitigation shall be designed to replace the functions lost as a result of the project.

Under LOP-10-R, appropriate compensatory mitigation is required, in accordance with applicable Federal regulation and policy, generally on a minimum 1.5:1, acre-for-acre basis for wetland impacts. Use of Corps approved mitigation banks may generally be acceptable methods of providing compensatory mitigation for small projects. However, the District will determine appropriate compensatory mitigation requirements on a case-by-case basis in accordance with Federal guidelines and established District policy. Compensatory mitigation required by other Federal, state or tribal programs may, but not always, satisfy this Clean Water Act requirement. Acreage data concerning project impacts and compensatory mitigation will be recorded in the District database for monitoring, impact analysis, and program evaluation purposes.

Applicants are encouraged to contact tribal authorities concerning possible participation in tribal compensatory mitigation programs or projects.

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

4. FORM AND CONFIRMATION OF AUTHORIZATION. Every authorization will be confirmed in writing by the District via a letter of permission authorizing the project to the applicant or authorized agent. The letter will identify any required special conditions.

5. ENDANGERED SPECIES.
a. No activity is authorized which is likely to adversely affect 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, except as noted in Section b below. 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 does not authorize the taking 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 Procedure, 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.

c. If it becomes apparent that a Federally listed endangered plant or animal species will be affected by work authorized by this permit, work must be stopped immediately and the St. Paul District of the Corps of Engineers must be contacted for further instruction.

6. HISTORIC PROPERTIES AND CULTURAL RESOURCES. No activity which may affect historic properties listed, or eligible for listing, on the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR part 325 Appendix C.

Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office, the National Register of Historic Places, and Tribal cultural resource office.

7. SECTION 401 WATER QUALITY CERTIFICATION DETERMINATIONS.
a. The EPA granted Section 401 water quality certification for LOP-10-R with one condition:

Discharges into waterbodies, and adjacent wetlands, that are designated as impaired under the Clean Water Act Section 303(d) process will require an individual, project-specific Section 401 certification from the EPA before a LOP-10-R is valid for the project

unless a Tribe has obtained 401 Certification authority. The District will verify whether the project is in a CWA 303(d) water.

When this condition applies, a LOP-10-R authorization will not become valid unless and until the applicant obtains an individual Section 401 certification or waiver for the project from the EPA. This condition will be clearly specified in the LOP-10-R authorizations.

b. The Grand Portage Band has assumed 401 water quality authority. The Grand Portage Band issued a resolution approving Water Quality Certification on June 15, 2010 (attached) and has determined that the LOP-10-R will not violate tribal water quality standards.

8. 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.

9. REMOVAL OF TEMPORARY FILLS. Any temporary fill must be removed in their entirety and the affected areas returned to their pre-existing elevation prior to completion of the project.

11. 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.

12. WATER QUALITY STANDARDS. All work or discharges to a watercourse resulting from authorized construction activities, particularly hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.

13. DISPOSAL SITES. If dredged or excavated material is placed on an upland disposal site (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 site, must be fully completed prior to the placement of any dredged material.

14. EROSION CONTROL. 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.

15. SUITABLE FILL MATERIAL. All fill (including riprap), if authorized under this procedure, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or fill material used for activities dependent upon this procedure and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State/Tribal Historic Preservation Officer (SHPO/THPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO/THPO will be forwarded to the St. Paul District Office.

16. CULTURAL RESOURCES. If cultural, archaeological, or historical resources are unearthed during activities authorized by this procedure, work must be stopped immediately and the Corps office must be contacted for further instruction.

17. 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.

18. 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 1-800-422-0705 in Minnesota, or at 1-800-943-0003 in Wisconsin, and the U.S. Coast Guard at telephone number 1-800-424-8802.

19. OTHER PROCEDURAL REQUIREMENTS. The LOP-10-R authorization does not eliminate the need for other local, tribal, state or Federal authorizations.

C. GENERAL CONDITIONS.

1. The time limit for completing work authorized by an LOP-10-R procedure ends three years after the date of the District's authorization letter. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the District for consideration at least three months before the expiration date is reached.

2. You must maintain the authorized activity in good condition and in conformance with the terms and conditions of this procedure. You are not relieved of this requirement if you abandon the authorized activity, although you may make a good faith transfer to a third party. 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 procedure from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological human remains while accomplishing the authorized activity you must

immediately stop work and notify this office of what you have found. We will initiate the Federal 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.

5. 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 LOP-10-R.

D. FURTHER INFORMATION. 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).

E. LIMITS OF THIS AUTHORIZATION.

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

1. Limits of this authorization.

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

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

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

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

2. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including but not limited to the following:

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

b. Damages to the authorized 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 this authorization.

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

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

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

4. Reevaluation of Permit Decision. The District may reevaluate its decision on this authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. Failure to comply with the terms and conditions of this authorization.

b. The information provided in support of the authorized activity proves to have been false, incomplete, or inaccurate.

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 you to comply with the terms and conditions of your authorization 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 if you fail 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.

5. Extensions. General condition 1 above, establishes a time limit for the completion of the activity authorized by this procedure. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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CEMVP-OP-R (2009-05025-CKK)
LETTER OF PERMISSION PROCEDURES LOP-10-R

Clean Water Act Section 404 Letter of Permission (LOP)
Procedures for Indian Reservations in Minnesota and Wisconsin

REPLACEMENT OF GP/LOP-05-R

These policies and procedures replace the LOP portion of the GP/LOP-05-R that was issued by the St. Paul District on April 18, 2005, and expired on April 18, 2010. Activities approved under the GP portion of the GP/LOP-05-R are covered under the GP-10-R. Activities not authorized under the general permit may be eligible for authorization under LOP-10-R provided they meet the eligibility requirements and are not specifically excluded.

SECTION 404 LETTER OF PERMISSION:

The General Public within the exterior boundaries of all Federally-designated Indian Reservations in the States of Minnesota and Wisconsin, except the Mole Lake Band of Sokaogon Chippewa and the Fond du Lac Band of Lake Superior Chippewa reservations, may request Section 404 authorization from the St. Paul District under the Section 404 Letter of Permission (LOP) procedures specified in this document.

CONDITIONS: All LOP authorizations are subject to the provisions and conditions specified in LOP-10-R. In addition, some authorizations may be subject to project-specific special conditions identified in the St. Paul District's authorization letter for the project.

PROJECT DESCRIPTION AND LOCATION: These LOP procedures apply to discharges of dredged and/or fill material into waters of the United States within the exterior boundaries of all Federally-designated Indian Reservations in Minnesota and Wisconsin as described herein, except for discharges within the exterior boundaries of the excluded reservations stated above.

DETERMINATION OF IMPACTS: All impacts to Waters of the United States associated with activities regulated by Section 404 of the Clean Water Act, including filling and discharges associated with mechanical land clearing and any related draining, excavating or inundating, are included in determining a project's total impact. Projects in water and/or wetlands that are subject to the Corps' Section 404 jurisdiction that involve no discharge do not require a Section 404 permit.

EFFECTIVE DATE: The attached LOP terms and procedures become effective when the Federal official, designated to act for the Secretary of Army, has signed below.

BOR Tamara Cameron — 8/30/10

Michael J. Price
Colonel, Corps of Engineers
District Engineer

Date

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

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

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>.

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

FEB 25 2005

REPLY TO THE ATTENTION OF:

WW-16J

Colonel Michael F. Pfenning
District Engineer
St. Paul District, Corps of Engineers
190 Fifth Street East
St. Paul, Minnesota 55101-1638

Dear Colonel Pfenning:

The U.S. Environmental Protection Agency (U.S. EPA) has reviewed the General Permit/Letter of Permission (GP/LOP) procedures as described in the Corps of Engineers' Public Notice GP/LOP-98-R-MMW, dated January 12, 2005. The U.S. EPA considers this notice to be an application from the Corps of Engineers for water quality certification pursuant to Section 401 of the Clean Water Act (33 USC s. 1341). The U.S. EPA's Section 401 certification decisions apply within the exterior boundaries of the Reservations of all the Native American Tribes of Minnesota and Wisconsin, with the exception of the Sokaogon Chippewa Community. Based on our review, the U.S. EPA has made the following Section 401 certification decisions:

GP 1- Maintenance of existing structures and fills, is certified without conditions.

GP 2- Oil/hazardous substances spill containment and cleanup, is certified without conditions.

The LOP is certified, subject to the following condition:

An individual Section 401 certification from the U.S. EPA shall be required for all waterbodies and adjacent wetlands designated as impaired through the Clean Water Act Section 303(d) process.

The Fond du Lac Band of Chippewa (Band) currently have U.S. EPA approved water quality standards, but have not yet developed Section 401 certification procedures. The Band has requested that the U.S. EPA deny Section 401 certification on their behalf. Therefore, the Section 401 certifications for GP 1, GP 2 and the LOP are denied within the exterior boundaries of the Fond du Lac Reservation.

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Thank you for the opportunity to review GP/LOP-98-R-MMW. If you have any questions about these decisions, please contact Janice Cheng of my staff at 312/353-6424.

Sincerely yours,

Jo Lynn Traub
Director, Water Division

cc: Bois Forte Band of Chippewa
Mille Lacs Band of Ojibwe
Fond du Lac Band of Chippewa
Prairie Island Dakota Community
Grand Portage Band of Chippewa
Red Lake Band of Chippewa
Leech Lake Band of Chippewa
Shakopee Mdewakanton Sioux Community
Lower Sioux Community
Upper Sioux Community
White Earth Band of Chippewa
Bad River Band of Chippewa
Oneida Tribe
Forest County Potawatomi Community
Red Cliff Band of Chippewa
St. Croix Band of Chippewa
Lac Courte Oreilles Band of Chippewa
Stockbridge-Munsee Community
Lac du Flambeau Band of Chippewa
Ho-Chunk Nation
Menominee Tribe