US Army Corps
of Engineers
St Paul District

ISSUANCE OF MODIFED REGIONAL GENERAL PERMIT RGP-003-MN

Public Notice

ISSUED: November 6, 2015
EXPIRES: January 31, 2017

REFER TO: MVP-2011-02988

SECTION 404 Clean Water Act
SECTION 10 Rivers and Harbors Act

1. PURPOSE AND BACKGROUND

The purpose of this notice is to announce the issuance of a modified version of regional general permit RGP-003-MN for the State of Minnesota (attached).

Three modifications were made to RGP-003-MN. These three modifications were described in a public notice that announced a public comment period between September 3, 2015 and October 5, 2015. In light of the St. Paul District's (District) decision to issue RGP-004-MN for public road authorities in the State of Minnesota, which is in effect for a period of five years beginning on October 28, 2015, the District has decided to modify two transportation-related categories in RGP-003-MN. The purpose of the proposed modifications to the transportation-related categories is to eliminate unnecessary redundancy for certain types of transportation activities, improve clarity with respect to the appropriate permit vehicle for authorization, and simplify the eligibility criteria for road authorities. No comments were received on the two changes to the transportation categories. The changes are described as follows:

1) Activity L. Linear Transportation Activities. The activities authorized in the first paragraph of this category were revised to read:

"*Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, and taxiways). The discharge into waters of the U.S. cannot exceed 0.5 acre of total permanent impacts or 500 linear feet of permanent impacts to a tributary at a single location. The width of the crossing must be limited to the minimum necessary for the actual crossing and shall be culverted, bridged, or otherwise designed to prevent the restriction of and withstand the expected high flows, prevent the restriction of low flows, and provide for the movement of organisms and the natural transport of sediment. This RGP category cannot be used to authorize non-linear features that may be associated with transportation projects, such as maintenance buildings, parking lots, or aircraft hangars. Additionally, this RGP category cannot be used to authorize discharges associated with the maintenance, reconstruction, expansion, modification, or improvement of existing public road systems proposed by public road authorities; such discharges will be evaluated pursuant to RGP-004-MN.*"

The second paragraph of Activity L will remain unchanged. The main change in the first paragraph of Activity L is to exclude activities that would be more comprehensively authorized under RGP-004-MN, namely the maintenance, reconstruction, expansion, modification or improvement of existing public roads by public road authorities. Restricting the use of Activity L for public road authorities will eliminate redundancy with RGP-004-MN, which provides more

expansive authorization for the maintenance, reconstruction, expansion, modification, or improvement of existing public roads. Public road authorities are still eligible to use RGP-003-MN, Activity L to authorize the construction of new roads.

2) Activity P. Maintenance of Existing Public Roads. This category was revoked in its entirety. The purpose of revoking this category is to eliminate redundancy and reduce confusion since discharges associated with the maintenance of existing public roads are authorized under RGP-004-MN or existing RGP-003-MN, Activity A (Maintenance Activities).

Finally, the District made the following change to RGP-003-MN:

3) On Page 1 of RGP-003-MN under the heading "Activities Specifically Excluded From RGP-003-MN", there is an exclusion for projects that would permanently alter more than 500 linear feet of a natural watercourse in a single location. The District removed this exclusion for projects eligible for authorization under Activity I and Activity Q by adding a sentence following the exclusion, as stated below:

"Would permanently alter over 500 linear feet of a natural watercourse in a single location through channelization, diversion, or filling. Note: This exclusion does not apply to projects where the permanent alteration would have an overall beneficial effect on the aquatic ecosystem associated with discharges proposed under Activities I (Stream and Wetland Restoration, Enhancement or Establishment Activities) or Q (Compensatory Mitigation Bank Construction)."

The change to this exclusion allows impacts that would be beneficial to the aquatic ecosystem to be authorized under RGP-003-MN rather than requiring an individual permit review for such projects.

All other terms and conditions of RGP-003-MN remain unchanged.

3. ADDITIONAL INFORMATION

The modified RGP-003-MN may be viewed on the District Internet web site at: http://www.mvp.usace.army.mil/Missions/Regulatory/PermittingProcessProcedures.aspx.

Persons with questions may obtain information by calling our general information number at (800) 290-5847 x 5525 or (651) 290-5525. Alternatively, questions can be submitted via email to mvp-reg-inquiry@usace.army.mil.

FOR THE DISTRICT ENGINEER:

Tamara E. Cameron
Chief, Regulatory Branch

Enclosure

DEPARTMENT OF THE ARMY PERMIT

Permittee: The General Public in Minnesota

Permit No: Regional General Permit RGP-003-MN

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

Issuance Date: **February 1, 2012**

Expiration Date: **January 31, 2017**

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

AUTHORITIES. Authorities include Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 403), as designated for each category of activities below in the section "Activities Authorized by the RGP-003-MN". General permits are issued for activities that are similar in nature and cause only minimal individual and cumulative impacts.

Project Description: The general public in Minnesota is hereby authorized to discharge dredged and fill material into waters of the United States, and perform work in Section 10 navigable waters, for the specified activities listed below. This authorization is subject to the enclosed terms, conditions, and limitations.

Project Location: RGP-003-MN project worksites are located in various waters of the United States, including jurisdictional streams, rivers, lakes and wetlands, except within the exterior boundaries of Indian Reservations and navigable waters of the U.S. at various locations in the state of Minnesota, except within the exterior boundaries of Indian Reservations. For a complete list of Section 10 Waters in Minnesota please refer to: http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=978

Activities Specifically Excluded From RGP-003-MN: RGP-003-MN authorization is not valid for any activity that:

1. Would permanently alter over 500 linear feet of a natural watercourse in a single location through channelization, diversion or filling. NOTE: This exclusion does not apply to projects where the permanent alteration would have an overall beneficial effect on the aquatic ecosystem associated with discharges proposed under Activities I (Stream and Wetland Restoration, Enhancement or Establishment Activities) or Q (Compensatory Mitigation Bank Construction).

2. Is located within a component of a designated Federal Wild and Scenic River, when the responsible Federal Agency has determined that the project would have a direct and adverse impact on the values that made the designated river eligible. (See standard condition 15);

3. Except as noted below, is in a calcareous fen, or in wetlands adjacent to and within 300 feet of a state designated calcareous fen. A list of calcareous fens can be found at http://www.dnr.state.mn.us/wetlands/type2.html. This restriction does not apply to work for which the Minnesota Department of Natural Resources (MnDNR) has approved a calcareous fen management plan specific to a project that otherwise qualifies for authorization under this general permit. Project proponents must provide evidence of an approved fen management plan to the District.

4. Is 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;

5. Except as noted below, is in a state designated trout stream, or in a water of the U.S. including jurisdictional wetlands that are adjacent to and within 300 feet of a state designated trout stream. This restriction does not apply to work performed under trout stream restoration projects performed under *Category I. Stream and Wetland Restoration, Enhancement or Establishment Activities or work performed under Category P. Maintenance of Existing Public Roads* or *Category V. Time Sensitive Pipeline Repair or Maintenance.* A current list of designated trout streams can be found at http://www.revisor.mn.gov/rules/?id=6264.0050 .

6. Is within the exterior boundaries of a Federally-recognized Indian Reservation; or

7. May impact federally listed threatened or endangered species, designated critical habitat, or specific regions of Minnesota where unrecorded populations of the Western prairie fringed orchid (*Platanthera praeclara*) or the Minnesota dwarf trout lily (*Erythronium propullans*) may be present, until notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Relevant federally listed threatened or endangered species include, but are not limited to, the Topeka Shiner (*Notropis Topeka*), piping plover (*Charadrius melodus)*, Canada lynx (*Lynx canadensis)*, Higgins eye pearlymussel (*Lampsilis higginsii*), and Winged mapleleaf mussel (*Quadrula fragosa*). See Endangered Species Information Attachment A, in #5 below and Standard Condition 21.

TERMS and PROVISIONS:

1. DISCRETIONARY AUTHORITY. As allowed under 33 CFR 325.2(e)(2), the Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under RGP-003-MN based on concern for the aquatic environment or for any other factor of the public interest.

2. PRECONSTRUCTION NOTIFICATION (PCN). Where required by the terms of this regional general permit, a prospective permittee must notify the District Engineer by submitting a pre-construction notification prior to beginning the activity and shall not begin the activity until written confirmation that the project is authorized by the RGP-003-MN is provided, except as otherwise indicated. See Reporting Activities in How to Apply for Authorization Information in #4 below.

3. CALCULATING AQUATIC IMPACT THRESHOLDS. For those activities with threshold limits, the measurement of the impact to waters of the U.S. for determining whether a project may be eligible for the RGP, shall be determined by calculating the area of waters or linear footage of streams where dredged or fill material would be discharged, plus the impacts to waters of the U.S. that would be excavated, inundated, or drained as a result of the regulated discharge (see loss of waters).

For reporting activities, all impacts, permanent and temporary, must be included in the pre-construction notification.

4. HOW TO APPLY FOR AUTHORIZATION UNDER RGP-003-MN:

a. Reporting Activities- Where required by the terms of this RGP, the prospective permittee must notify the District Engineer with a pre-construction notification (PCN), and shall not begin the activity until notified by the St. Paul District that the project is eligible for authorization under this RGP and work may proceed with any special conditions imposed by the District Engineer, or designated representative.

PCN requirements give the Corps the opportunity to evaluate certain proposed RGP activities on a case-by-case basis to ensure that they will have no more than minimal adverse effects, individually and cumulatively. This case-by-case review often results in adding project-specific conditions to the authorization to ensure that the RGP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and other public interest review factors. Review of the PCN may also result in the Corps asserting discretionary authority to require a higher level of individual permit review.

Contents of the PCN: The notification must be in writing and include the following: (1) Name, address, and telephone numbers of prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project and scope of work; (4) all direct and indirect adverse environmental effects the project would cause; (5) identification of aquatic resources in the project area (in some cases the Corps may require a delineation of the project area prepared in accordance with the current Corps of Engineers Wetland Delineation Manual); (6) a statement regarding compensatory mitigation (33 CFR 325.1(d)(7)); (7) drawings or sketches should be provided as necessary to show that the activity complies with the terms of the RGP; and (8) any other general or individual

permits used or intended to be used to authorize the project.

b. Non-Reporting Activities- Non-reporting activities authorized by this RGP may commence when project proponents have carefully confirmed that the activity will be conducted in compliance with all of the terms and conditions of RGP-003-MN. No PCN to the Corps is required; however, if requested, the Corps will confirm whether or not proposed work is authorized by the RGP. Persons proposing to do work should note that conditions of the RGP 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, certain cultural/archaeological resources, or activities specifically excluded from authorization under RGP-003-MN are excluded from authorization under the non-reporting categories of this RGP.

General Information- Information about the Corps Regulatory Program, Corps staff contacts by county and permit requirements may be obtained by emailing mvp-reg-inquiry@usace.army.mil or on the District's web page https://www.mvp.usace.army.mil. If the necessary information is not available on the referenced web site, the Corps contact for your county can be obtained by calling 651-290-5375 or 1-800-290-5847 ext. 5525.

5. ENDANGERED SPECIES.

The Corps' review will include a determination regarding compliance with Section 7 of the Endangered Species Act. Corps staff will consult directly with the U.S. Fish and Wildlife Service (USFWS) concerning projects or proposals which appear to have potential to affect listed species. Projects that impact waters of the U.S, including jurisdictional wetlands within the areas described below must be coordinated with the St. Paul District to assure endangered species will not be affected. Work on projects that may affect designated critical habitat shall not begin until the project proponent is notified by the District that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information about currently listed Federal Threatened or Endangered species in Minnesota may be obtained by contacting the USFWS Twin Cities Field Office at 612-725-3548 or http://www.fws.gov/midwest/endangered/lists/minnesot-spp.html. The USFWS evaluates species and habitats as proposed candidates for listing and continually updates the federal list. See Standard Condition 21. See attachment A for the Known Populations and Designated Critical Habitat of Threatened and Endangered Species.

Persons performing work should be aware that Federal or state regulations concerning endangered species may apply to their projects whether or not the work requires a Corps permit.

6. HISTORIC PROPERTIES AND CULTURAL RESOURCES

a. The Corps' review will include a determination regarding compliance with Section 106 of the National Historic Preservation Act (NHPA), as appropriate. The National Register of Historic Places will be consulted to determine the presence or absence of known cultural resources. Corps staff will consult cultural resources staff concerning projects with the potential to affect cultural resources. Corps staff will consult with the State Historic Preservation Office as appropriate. Cultural resources surveys will be required where necessary and in most cases, the District will require that the project

proponent conduct the investigation (survey). (33 CFR Part 325 Appendix C.5(e)). See Standard Condition 8.

Information concerning cultural resources may be obtained from the State Historic Preservation Office website (http://www.mnhs.org/shpo/) or by calling (651) 259-3450.

Persons performing work should be aware that Federal or state regulations concerning cultural resources may apply to their projects whether or not the work requires a Corps permit

7. FEDERAL TRUST RESPONSIBILITY TO INDIAN TRIBES

Projects that the Corps finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the federal trust responsibility will be considered in the Corps' evaluation. See Standard Condition 14.

8. OTHER AGENCY PERMIT REQUIREMENTS

Corps RGP-003-MN authorization does not eliminate the need for other local, state or Federal authorizations, including but not limited to, National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits from the Minnesota Pollution Control Agency, public waters work permits from the Minnesota Department of Natural Resources, or Wetland Conservation Act authorizations from the applicable local governmental unit.

9. OTHER AGENCY INFORMATION

Other agency information may assist project proponents in designing projects or preparing information about their project. This information, such as Best Practices for Meeting DNR General Public Waters Work Permit GP2004-0001: MnDOT Projects with Bridges, Culverts, or Outfalls, dated May 2011, is posted on the District's web page https://www.mvp.usace.army.mil.

10. DEFINITIONS.

Bioengineering techniques - Bioengineering is the combination of biological, mechanical, and ecological concepts to control erosion and stabilize stream banks through the use of vegetation or a combination of it and construction materials.

Conversion or Exchange- Activities that involve converting one type of wetland or aquatic resource to another, for example, impounding water on a sedge meadow to create a deep marsh. Conversion typically does not result in increased functions. For example, excavating a sedge meadow to create a deep marsh, impounding water over a forested wetland that drowns out the woody vegetation and replaces it with an aquatic bed community, or placing a control structure on a stream to create an impoundment, may degrade the functions of the existing wetland or aquatic resource and, if regulated, can require compensatory mitigation to offset adverse impacts.

Creation(Establishment) - Activities that involve manipulating an area or constructing a wetland in an upland site where wetlands have not historically existed.

Currently Serviceable- Useable as is or with some maintenance, but not so degraded as to essentially require re-construction.

Enhancement- Enhancement involves activities or management techniques that result in improvement or a net increase to specific function(s) of an existing wetland or stream, such as by invasive weed eradication or control; prescribed burns; plantings of native vegetation; or instream habitat structures. This increase in one or more functions does not result in a gain in wetland acres and may result in a decrease in other wetland functions. Work resulting in a change in type does not constitute enhancement.

Fill material- Fill material, as defined in 33 CFR 323.2, means material placed in waters of the U.S. where the material has the effect of:

a. Replacing any portion of a water of the U.S. with dry land; or
b. Changing the bottom elevation of any portion of a water of the U.S.

Examples of fill material include, but are not limited to: rock, sand, soil, clay, construction debris, wood chips, overburden from mining or other excavation activities, and material used to create any structure or infrastructure in waters of the U.S.

Forested Wetlands- Forested wetlands include all wetlands that meet the technical criteria established by Eggers, S.D. and D.M. Reed. 1997. [Wetland Plants and Plant Communities of Minnesota and Wisconsin. U.S. Army Corps of Engineers, St. Paul District] for Coniferous Bog, Hardwood Swamp, Coniferous Swamp, or Floodplain Forest plant community types. This definition includes areas that have been deforested within the last 5 years.

Independent Utility- A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Invasives/Nonnative plant species- For the purposes of this RGP invasive and/or non-native plant species include but are not limited to: reed canary grass (*Phalaris arundinacea*), Canada thistle (*Cirsium arvense*), bull thistle (*Cirsium vulgare*), smooth brome grass (*Bromus inermis*), giant ragweed (*Ambrosia trifida*), common ragweed (*Ambrosia artemisiifolia*), quack grass (*Elytrigia repens*), black locust (*Robinia pseudoacacia*), sweet clovers (*Melilotus alba* and *M. officinalis*), garlic mustard (*Alliaria petiolata*), flowering rush (*Butomus umbellatus*), yellow iris (*Iris psuedacorus*), crown vetch (*Coronilla varia*) , birdsfoot trefoil (*Lotus corniculatus*), non-native honeysuckles (e.g., *Lonicera* x *bella*), and non-native buckthorns (*Rhamnus cathartica* and *R. frangula*), and purple loosestrife (*Lythrum salicaria*).

Note - this list is provided primarily for informational purposes only and is applicable for project proponents developing on-site compensatory mitigation plans; and for those proposing projects under categories I, J, M and N. This list is not a standard condition for which all RGP-003-MN authorizations are subject.

Loss of Waters - This term refers to aquatic resources filled or otherwise permanently adversely affected by flooding, excavation, or drainage. Permanent adverse effects include impacts that result in a permanent loss of waters or adverse effect to certain functions of waters of the U.S., and generally occur because of direct fill activities; permanent conversion of wetland types; ditch excavation in wetlands; or drainage of wetlands. The loss of streambed includes linear feet of streambed that is filled, excavated or flooded. Temporary impacts are impacts that result in a temporal loss of or temporary effect to certain functions of water of the U.S. but where the area impacted is restored to pre-construction contours and elevations. Temporary impacts are typically not included in the measurement of loss of waters.

Practicable - Available and capable of being done after taking into consideration cost, existing technology and logistics in light of the overall project purpose.

Preconstruction Notification (PCN)- A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed scope of work, location, extent of resources in project area and its anticipated environmental effects. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants confirmation that the activity is authorized by a general permit.

Previously Authorized- For the purposes of this RGP, this refers to projects that have previously received authorization under Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899. This includes projects authorized by non-reporting general permits but does not include projects constructed under CWA exemptions, projects constructed prior to enactment of the CWA, or unauthorized fills.

Real Estate Subdivision- Any land that is divided for the purposes of disposition into two or more lots, parcels, units, or interests.

Restoration- Restoration consists of the re-establishment or rehabilitation of sites that historically supported wetlands or streams and frequently retain some wetland components (e.g., hydric soils) or stream processes even after man-made disturbances such as drainage, cropping or channelization. Re-establishment involves techniques for returning wetland functions to a location where no wetland currently exists and generally results in a gain in wetland function and acres. Rehabilitation involves repairing or increasing the functions of an existing, degraded wetland or stream and does not result in a gain in wetland acres.

Reversion- The act of returning an area or part of the landscape to a previous land use condition (i.e. agricultural land that is returned to agricultural production after the terms of a wetland enhancement agreement has expired).

Section 10- Refers to Section 10 of the Rivers and Harbors Act of 1899. This act addresses activities in, over or under navigable waters of the Unites States.

Single and Complete Project- For purposes of RGP-003-MN, the term, "single and complete project" means the total project proposed. For example, if construction of a residential development or linear project such as a road or utility line affects several different areas of waters/wetlands, the cumulative total of impacted waters of the U.S., including jurisdictional wetlands, is the basis for deciding the project's total wetland/water impact. For "phased" developments, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed.

Shoreland (Wetland) Protection Zone - For the purposes of RGP-003-MN, the term shoreland wetland protection zone includes areas defined under Minnesota Statute 103G.005, subdivision 15b. (https://www.revisor.mn.gov/statutes/?id=103G.005)

Special Aquatic Site- Special aquatic sites are defined in the Environmental Protection Agency's Section 404(b)(1)Guidelines (40 CFR part 230) as those sites identified in subpart E. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. Those most frequently found in Minnesota are wetlands, riffle-pool complexes, and vegetated shallows.

ACTIVITIES AUTHORIZED BY THE RGP-003-MN:

A. Maintenance activities.
Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the repair, rehabilitation or replacement of any previously authorized, currently serviceable structure or fill, or any currently serviceable structure or fill authorized by 33 CFR 330.3, that permanently impacts not more than ½ acre of waters of the U.S., including jurisdictional wetlands, or 500 linear feet of a stream in a single location, in addition to the area that has already been disturbed by the structure or fill to be maintained. This category authorizes discharges for the repair, rehabilitation, or replacement of structures of fill that do not qualify for the CWA Section 404(f) exemption for maintenance.

The structure or fill to be maintained is for its original purpose or most recently authorized modification. Minor deviations to a structure, configuration, or the area of fill that is necessary to conform to modern construction practices, materials, construction codes or safety standards is authorized.

Temporary structures, fills and work necessary to conduct the maintenance activity are authorized. Temporary impacts are not included in the ½ acre limitation. Temporary impacts must be kept to the minimum necessary to complete the work. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures/work/discharges including cofferdams, are necessary for construction activities, access fills or dewatering of construction sites. Temporary fills must consist of clean fill materials, and be placed in a manner that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction contours and elevations. The areas affected by temporary fills must be re-vegetated with native, non-invasive plant species, as appropriate.

Projects to repair or replace structures or fills destroyed by storms, floods, fire or other discrete events are included, provided the work is commenced or under contract to commence within two years of the date that the damage occurred.

This RGP category does not authorize maintenance dredging for the primary purpose of navigation. The disposal of excavated or dredged material into a water of the U.S. obtained from a maintenance dredging operation is not authorized under this RGP category. No new stream channelization or stream relocation work is authorized. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements:
The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN, if any of the following criteria are met:

Impacts to waters of the U.S., including jurisdictional wetlands, exceed 0.10 acre; **or** the impact amounts requiring mitigation identified in standard condition 1 are exceeded; **or** the structure or fill being maintained or repaired is more than 50 years old; **or** activities are conducted in waters covered by Section 10 of the Rivers and Harbors Act of 1899.

B. Bank Stabilization.
Discharges of dredged or fill material in waters of the U.S., or work in Section 10 waters for bank stabilization activities necessary for erosion protection, provided that no material is placed in wetlands and the bank stabilization activity is no more than 500 feet in length. The discharge shall not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark, unless the activity consists primarily of utilizing bioengineering techniques to accomplish the stabilization. No material shall be placed in any location or in a manner that impairs surface water flow. No material shall be placed in a location where it may be eroded by normal or expected high flows. Construction of temporary staging areas and/or platforms in waters of the U.S., including wetlands is not authorized. Materials that are considered solid or hazardous waste products under the MPCA guidelines shall not be used. No stream channelization is authorized. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements:
The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN , if any of the following criteria are met:

More than 50 feet of existing bank is disturbed by grading or reshaping; **or** activities are conducted in waters covered by Section 10 of the Rivers and Harbors Act of 1899.

C. Utility Line Discharges.
Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the construction, maintenance and repair of utility lines and associated facilities, including:

1. Utility lines: Discharges of dredged or fill material associated with excavation, backfilling or placement of bedding material for the construction or maintenance of utility lines including outfall and intake structures for a single and complete project provided that the area is restored to preconstruction contours and elevations.

A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission of electrical energy, telephone, electronic data, and radio or television communication. The term utility line does not include activities which drain a water of the U.S.

Material resulting from trench excavation may be temporarily sidecast (up to three months) into waters of the U.S., provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The

District Engineer may extend the period of temporary side casting, not to exceed a total of 180 days, where appropriate. In wetlands, the top 6" to 12" of the trench shall normally be backfilled with topsoil from the trench. Furthermore, the trench shall not be constructed in such a manner as to drain waters of the U.S. (e.g. backfilling with extensive gravel layers, creating a French drain effect). Utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain waters of the U.S. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each water body.

2. Foundations for overhead utility lines, utility poles or anchors: Discharges of dredged or fill material for the construction or maintenance of foundations, utility poles or anchors in waters of the U.S., provided that the foundations are the minimum size necessary and separate footings are used where feasible.

3. Utility line substation or associated facilities: Discharges of dredged or fill material for construction of substation or other facilities associated with a utility line that permanently impact not more than ½ acre of waters of the U.S.

Temporary structures, fills and work necessary to construct or conduct the maintenance/repair activity are authorized. This includes the placement of temporary construction mats and mechanized land clearing necessary for the construction, repair or maintenance of utility lines, substations and foundations, provided that the cleared area is kept to a minimum and pre-construction contours and elevations are restored. Temporary fill impacts must be kept to the minimum necessary to complete the work. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures/work/discharges including cofferdams, are necessary for construction activities, access fills or dewatering of construction sites. Temporary fills must consist of clean fill materials, and be placed in a manner that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction contours and elevations. The areas affected by temporary fills must be re-vegetated, with native, non-invasive plant species, as appropriate. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN , if any of the following criteria are met:

The utility line that is in or crosses waters of the U.S. totals more than 500 feet in length, **or** mechanized land clearing of forested wetland or permanent conversion of forested wetlands would occur **or** activities are conducted in/over/under waters covered by Section 10 of the Rivers and Harbors Act of 1899.

D. United States Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeway and approach fills are not included. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

E. Return Water From Upland Contained Disposal Areas. Discharges associated with return water. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland area and does not require a 404 permit.

The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. **(Section 404 CWA).**

F. Oil spill/Hazardous substance clean up. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR Part 300), provided that (1) the work is done (a) in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3, or (b) under the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300, and/or (c) in accordance with any existing State contingency plan, and (2) provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. Discharges in waters of the U.S. or work conducted in Section 10 waters for such containment or cleanup are authorized by this RGP; however, all appropriate governmental units, as well as the Corps, shall be informed of any such discharge or work as soon as practical. **(Section 10 RHA / Section 404 CWA)**

G. Structural Discharges. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member for support for standard pile supported structures such as a utility pole foundation, bridge support, or pier support. This activity does not include building foundations or other structures such as pilings intended for use as building supports. The structure itself may require a Section 10 RHA permit if located in navigable waters of the United States. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

H. Completed Enforcement Actions. Discharges of dredged or fill material in waters of the U.S. or any structures or work in Section 10 waters: (1) remaining in place or (2) undertaken for mitigation, restoration, or environmental benefit in compliance with either: (a) The terms of a signed written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, or (b) the terms of a United States Environmental Protection Agency 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:
(i) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity to be authorized by this RGP; and
(ii) The District Engineer issues a verification letter authorizing the activity subject to the terms and conditions of this RGP and the settlement agreement or order on consent. The District Engineer's verification letter shall include a specified completion date and may also include additional conditions not inconsistent with the settlement agreement or order on consent; or
(c) The terms of a final federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States for violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or
(d) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance with the underlying court decision, consent decree, settlement agreement, or non-judicial settlement agreement, or order on consent is a condition of this RGP. A violation of this RGP occurs if the permittee does not comply with the terms of this RGP or the terms of the underlying court decision, consent decree, or judicial/non-judicial settlement agreement, or order on consent. This RGP does not apply to any discharges occurring after the date of the decision, decree, or agreement that are not in compliance with the underlying order or settlement agreement and for the purpose of mitigation, restoration, or environmental benefit. For purposes of this authorization, the term "violation of Section 404 of the Clean Water Act" includes both violations of Section 404 and violations of Section 301 of the Act involving discharges regulated under Section 404. **(Section 10 RHA /Section 404 CWA)**

> **Notification Requirements:** The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

I. Stream and Wetland Restoration, Enhancement or Establishment Activities. Discharges of dredged or fill material in waters of the U.S. associated with the restoration and enhancement of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, the creation of wetlands and riparian areas, or the restoration and enhancement of non-Section 10 streams and open water areas, provided that the discharges are: (i) on non-Federal public lands or private lands, in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement or wetland creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the U.S. Forest Service (USFS), or their designated state cooperating agencies; or (ii) voluntary stream or wetland restoration or enhancement, or wetland creation actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office standards; or (iii) on any Federal land; or (iv) by or funded by a state agency on any public or private land. Authorized activities include, but are not limited to, the installation, removal and maintenance of small water control structures, dikes and berms; the installation of current deflectors; the enhancement, restoration, or creation of riffle and pool stream structures; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the removal of small dams; the construction of small nesting islands; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land-clearing to remove non-native invasive, exotic, or nuisance vegetation; the removal of small dams; and other related activities. This RGP category cannot be used to authorize activities for the conversion of a stream to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This RGP category cannot be used to channelize a stream and does not authorize the conversion of natural wetlands to another aquatic use, such as creation of an impoundment for waterfowl where a forested wetland or fresh meadow previously existed. However, this RGP category may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values.

Reversion: This RGP category also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities authorized under this RGP category). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this RGP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner

and the FWS, NRCS, FSA, USFS, or an appropriate state cooperating agency. This RGP category also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and FWS, NRCS, FSA, USFS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the project proponent or the appropriate Federal or state agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. Except for the activities described above, this RGP category does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN.

For activities under (i) and (ii) above, the project proponent must submit to the District Engineer a copy of 1) the binding stream or wetland enhancement or restoration agreement or wetland creation agreement, including a project description and project plans, or (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream or wetland enhancement or restoration action or wetland creation action, including a project description, project plans and applicable standards.

J. Moist soil management for wildlife. Discharges of dredged or fill material in waters of the U.S. that are associated with moist soil management for wildlife, for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to: the repair, maintenance or replacement of existing water control structures; the repair or maintenance of existing dikes; and, actions implemented to impede succession, prepare seed beds, or establish fire breaks. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This RGP category does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. This RGP category does not authorize converting wetlands to uplands, impoundments or other open water bodies. **(Section 404 CWA)**

K. Minor discharges. Discharges of dredged or fill material in waters of the U.S., or activities in Section 10 waters, for a single and complete project that would result in filling, draining, excavating or inundating not more than 400 square feet of waters of the U.S., including jurisdictional wetlands. This authorization may NOT be used more than once by the permittee or property owner so as to impact more than 400 square feet of the same wetland basin. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN if activities are conducted in navigable waters covered by Section 10 of the Rivers and Harbors Act of 1899.

L. Linear transportation crossings. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the construction, expansion, modification, or improvement of linear transportation projects (e.g. roads, highways, railways, and taxiways). The discharge into waters of the U.S. cannot exceed 0.5 acre of total permanent impacts or 500 linear feet of permanent impacts to a tributary at a single location. The width of the crossing must be limited to the minimum necessary for the actual crossing, and shall be culverted, bridged or otherwise designed to prevent the restriction of and withstand the expected high flows, prevent the restriction of low flows, and provide for the movement of organisms and the natural transport of sediment. This RGP category cannot be used to authorize non-linear features that may be associated with transportation projects, such as maintenance buildings, parking lots or aircraft hangars. Additionally, this RGP category cannot be used to authorize discharges associated with the maintenance, reconstruction, expansion, modification, or improvement of existing public road systems proposed by public road authorities; such discharges will be evaluated pursuant to RGP-004-MN.

Temporary structures, fills and work necessary to conduct the construction activity are authorized. Temporary impacts are not included in the ½ acre limitation. Temporary impacts must be kept to the minimum necessary to complete the work. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures/work/discharges including cofferdams, are necessary for construction activities, access fills or dewatering of construction sites. Temporary fills must consist of clean fill materials, and be placed in a manner that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction contours and elevations. The areas affected by temporary fills must be re-vegetated with native, non-invasive plant species, as appropriate. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN, if any of the following

criteria are met:

There is any discharge into a special aquatic site, including wetlands; **or** there is any discharge into a stream or river; **or** activities are conducted in waters covered by Section 10 of the Rivers and Harbors Act of 1899.

M. Grass waterways. Discharges of dredged or fill material associated with the installation of grassed waterways in waters of the U.S., including jurisdictional wetlands, under the technical supervision of NRCS, for the purpose of erosion control on agricultural land planted to annual commodities for at least 3 of the previous 5 years. Eligible sites shall have less than 10% woody vegetation. No annual cropping or grazing shall take place after construction, and mowing shall be restricted to July 15-August 15. Written confirmation from the Corps is not required prior to the start of work. The waterway shall be seeded with a seed mix consisting of native, non-invasive plant species designed for swales and ditches. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN if the project has segments with slopes of less than 1%.

N. Wildlife Ponds. Discharges of dredged or fill material for the construction of wildlife ponds that result in permanent and temporary impacts, through filling, excavation, or inundation, of up to ½ acre of waters of the U.S., including jurisdictional wetlands. Wildlife ponds shall be constructed with irregular shorelines, shallow side slopes (e.g., 8-foot horizontal to 1-foot vertical or flatter), and shall be dominated by water depths of 4 feet or less. All excess excavated material must be placed at an upland location and no temporary stockpiling of excavated material is allowed in wetlands outside the footprint of the pond site. The primary purpose of this activity must be wildlife habitat. The creation of nesting islands is not authorized and impacts to forested wetlands is not authorized under this category. This RGP category does not authorize the discharge of dredged or fill material into streams. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

O. Residential, Commercial, Agricultural and Institutional Developments. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters for a single and complete project for the construction or expansion of residential, commercial, agricultural, or institutional operations or developments that do not result in impacts to more than ½ acre of waters of the U.S. or 500 linear feet of a stream. Activities authorized include building foundations, building pads, and attendant features. Attendant features include, but are not limited to: roads, parking lots, garages, utility lines, geothermal systems, yards, storm water management facilities, culvert installation, and recreational facilities that are integral to the development.

For any development or subdivision, the aggregate total loss of waters of the U.S. authorized under this category cannot exceed ½ acre. This RGP category does not authorize maintenance dredging for the primary purpose of navigation. The disposal of excavated or dredged material into a water of the U.S. obtained from a maintenance dredging operation is not authorized under this RGP category. No new stream channelization or stream relocation work is authorized under this RGP category. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

P. [RESERVED]

Q. Compensatory Mitigation Bank Construction. Discharges of dredged or fill material in waters of the U.S. associated with the creation, rehabilitation or restoration (via re-establishment or enhancement) of non-tidal wetlands in accordance with the terms and conditions of an approved wetland mitigation banking instrument signed by the Corps. Such activities include, but are not limited to, the removal of accumulated sediments; the installation, removal and maintenance of small water control structures, dikes and berms; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of open water areas; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land-clearing to remove undesirable vegetation; and other related activities.

This RGP category includes projects that have been planned, reviewed and approved in accordance with the St. Paul District Army Corps of Engineers compensatory mitigation policy (http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=924&subpageid=387)and federal mitigation banking procedures (http://www.epa.gov/owow_keep/wetlands/wetlandsmitigation/index.html).

Work authorized under this RGP category cannot proceed until the Corps has completed the mitigation bank approval process and provided the project proponent with a signed banking instrument. This RGP category may be used to relocate aquatic habitat types on the project site, provided there are net gains in aquatic resource functions and values. This RGP category does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN. **(Section 404 CWA)**

R. Scientific Measuring Devices. Discharges of dredged or fill material or work in Section 10 waters in conjunction with scientific devices used to measure and record scientific data, such as staff gauges, water

recording devices, water quality testing and improvement devices, and similar devices. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 150 square feet. Upon completion of the study, the measuring device and any other structures or fills associated with that device (e.g., anchors, buoys, lines etc) must be removed and the area restored to pre-construction contours and elevations. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN. Written confirmation from the Corps is not required prior to the start of work.

S. Survey Activities/Test Drilling. Discharges of dredged material in waters of the U.S. or work in Section 10 waters in conjunction with survey activities, such as core sampling or mineral exploratory operations. This RGP category authorizes the construction of temporary pads, provided the discharge does not exceed 1/10 acre. Fill placed for access roads to survey or drilling sites is not authorized by the RGP category. The RGP category does not authorize any permanent fill or structures, and the area must be restored to pre-construction contours and elevations. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Written confirmation from the Corps is not required prior to the start of work.

T. Restoration of Impacts from Exempted Activities. Discharges of dredged or fill material required for the removal of work exempt from Section 404 CWA regulation under 33 CFR § 323.4, and restoration of the areas impacted by the exempt activities. Restoration activities must restore wetland functions and services to the extent practicable. Activities include but are not limited to, the de-commissioning of farm and forestry roads, removal or cessation of minor drainage activities and restoration of stock ponds to original contours. Restored areas must be seeded to native, non-invasive plant species, or actively farmed if the restored area is part of an established (i.e. on-going) farming operation. **(Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

U. Temporary Access, Structures or Dewatering. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters necessary for temporary access fills or dewatering of construction sites. Impacts must be temporary and kept to the minimum necessary to complete the work. Activities authorized include, but are not limited to cofferdams and construction mats. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable. Fill material must be clean and be placed in a manner that will not be eroded by expected high flows. Following construction, the fill and structures authorized by this RGP must be removed in their entirety and the affected areas returned to pre-construction contours and elevations. The areas affected by the fill or structures must be re-vegetated with native, non-invasive plant species, as appropriate. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

V. Time Sensitive Pipeline Repair or Maintenance. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) as time-sensitive (see 49 CFR parts 192 and 195).

This RGP category does not authorize the construction of new pipelines. This RGP category does not authorize the re-alignment of existing pipelines to a new area. This RGP category does not authorize any repair that permanently impacts the flow or circulation of waters of the U.S., such as an alteration or channelization of streams. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

The exclusions to work in trout streams and adjacent wetlands do not apply to this category as long as the work is in compliance with all other terms and conditions of this RGP. The exclusion to work in a calcareous fen or in wetlands adjacent to or within 300 feet of a state designated calcareous fen do not apply to this category if the project proponent provides a MnDNR approved fen management plan specific to the work.

W. Outfall Structures and Associated Intake Structures. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge

Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this RGP category, unless they are directly associated with an authorized outfall structure. **(Section 10 RHA / Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN and receive written confirmation that the project is authorized by the RGP-003-MN.

X. Beach Sand Blankets. Discharges associated with the placement of sand blankets in waters of the U.S. or work in Section 10 waters, provided that no material is placed in wetlands above the ordinary high water mark (OHWM) and that the sand blanket does not exceed 50 feet in width (parallel to the shoreline) and 10 feet in length (perpendicular to the shoreline) waterward of the OHWM. This RGP category does not authorize material to be placed in areas of existing emergent vegetation without first obtaining a MnDNR permit to control aquatic plants. This RGP category does not authorize material to be placed in posted fish spawning areas. This RGP category does not authorize the use of a plant barrier or liner. **(Section 10 RHA /Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN if a sand blanket is proposed to be placed in the same location more than twice or activities are conducted in navigable waters covered by Section 10 of the Rivers and Harbors Act of 1899.

The limitation on sand reapplication applies regardless of the maintenance provisions of Category A of this RGP.

Y. Boat Ramps. Discharges of dredged or fill material in waters of the U.S. or work in Section 10 waters related to the construction of boat ramps, provided the activity meets all of the following criteria:
a) The boat ramp does not exceed 12 feet in width or extend 10 feet waterward of the ordinary high water mark (OHWM);
b) No more than 5 cubic yards of excavation and no more than 5 cubic yards of fill is used to construct a stable base;
c) The ramp consists of crushed stone, gravel, natural rock, pre-cast concrete planks, clean sand, steel matting, or other suitable material; and
d) No material is placed in wetlands above the OHWM.
This RGP category does not authorize material to be placed in posted fish spawning areas. **(Section 10 RHA/ Section 404 CWA)**

Notification Requirements: The project proponent must notify the District Engineer by submitting a PCN if activities are conducted in navigable waters covered by Section 10 of the Rivers and Harbors Act of 1899.

STANDARD CONDITIONS

All RGP-003-MN authorizations are subject to the following standard conditions, as applicable, in addition to any case-specific conditions imposed by the District Engineer. These conditions and any special conditions must be satisfied for any RGP authorization to be valid:

1. Mitigation/Sequencing. Discharges of dredged or fill material into waters of the U.S. **must be minimized or avoided to the maximum extent practicable.**

When determining the least environmentally damaging practicable on-site alternative, impacts to all resources including jurisdictional waters, non-jurisdictional waters, and high quality uplands should be considered.

Mitigation in all its forms (avoiding, minimizing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. Compensatory mitigation requirements are determined on a case by case basis and may be required to reduce adverse effects of a project, either temporary or permanent, to the minimal level.

The District Engineer will determine appropriate compensatory mitigation requirements in accordance with Federal guidelines and established District policy.

Generally, compensatory wetland mitigation shall be required for projects that impact more than:

400 square feet in a shoreland wetland protection zone,

2,000 square feet in a "less-than-50 percent" county,

5,000 square feet in a "50%-to-80%" county, and

10,000 square feet in a "greater than 80%" county.

as shown on the attached map labeled enclosure 5:

When the above project thresholds are exceeded, the compensatory mitigation requirement applies to the project's total wetland impacts, including the threshold amounts specified above. Use of Corps-approved mitigation banks and in-lieu fee procedures are generally acceptable methods of providing compensatory mitigation for small projects having compensatory mitigation requirements of 1/4 acre or less.

Compensatory mitigation shall be designed to replace the functions lost as result of the project. Where certain functions and services of waters of the U.S. are permanently adversely affected as a result of the authorized discharge, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility right of way, or are temporarily affected, such as the temporary conversion of forested or scrub-shrub wetlands in a linear project corridor, compensatory mitigation may be required to reduce the adverse effects of the project to the minimal level.

For activities where compensatory mitigation is required, project proponents should include a mitigation plan prepared in

accordance with 33 CFR Part 332, and *the St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota* (http://www.mvp.usace.army.mil/regulatory/default.asp?pageid=924&subpageid=387). The plan prepared should describe the measures proposed to ensure that the activity complies with the Section 404(b)(1) guidelines (40 CFR Part 230). In cases where a Corps-approved bank is proposed to be used, a statement of intent to use the bank is generally sufficient. Compensatory mitigation required by other Federal or state programs may, but will not necessarily, satisfy this Clean Water Act requirement.

2. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

3. Suitable fill material. No activity may use unsuitable material (e.g., trash, debris, car bodies, unprocessed asphalt, etc.). All fill (including riprap) authorized under this RGP, must be free from toxic pollutants in toxic amounts.

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

5. 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. Work should be done in accordance with state-approved, published practices, such as defined in Minnesota Pollution Control Agency document, PROTECTING WATER QUALITY IN URBAN AREAS - BEST MANAGEMENT PRACTICES FOR MINNESOTA.

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. Cofferdams shall be constructed and maintained so as to prevent erosion into the water. If earthen material is used for cofferdam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion.

6. Removal of temporary fills. Temporary fills are allowed to remain in place for up to three months. Upon request the District Engineer may extend this period, allowing temporary fills to remain in place for up to a total of 180 days, where appropriate.

At the end of the specified timeframe, temporary fills must be removed in their entirety and the affected areas returned to their preconstruction contours and elevation. The areas affected by temporary fills must be re-vegetated with native, non-invasive plant species, as appropriate.

7. 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).

8. **Historic Properties, Cultural Resources**. (a) No activity which may affect historic properties listed, or potentially eligible for listing, on the National Register of Historic Places is authorized, until the District Engineer has complied with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Federal project proponents should follow their own procedures for complying with the requirements of Section 106, and provide documentation of compliance with those requirements. 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. (b) If cultural resources, such as historic structures or buildings, or archaeological remains are identified in the project area, or are discovered during activities authorized by this permit, you must immediately stop work and notify the District Engineer of what you have found. We will initiate the Federal and state coordination required to satisfy our responsibilities under Section 106 of the NHPA. (c) Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.

9. Adverse effects from impoundments. If the activity 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.

10. Migratory Bird breeding areas. Activities in waters of the U.S. that serve as breeding areas for migratory birds, including waterfowl, must be avoided to the maximum extent practicable.

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

12. Spawning areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

13. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance. Equipment should be clean and free of greases, oils, fuels, and sediments

prior to working within aquatic habitats.

14. 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.

15. 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 that the proposed activity will not adversely affect 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.)

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

17. 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, shall 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. To the extent practicable and appropriate measures should be taken to control and minimize the spread of invasive species via equipment transfer.

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 State Duty Officer at 1-800-422-0798 and the U.S. Coast Guard at 1-800-424-8802.

19. 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.

20. Water intakes/activities. No activity may occur in the proximity of a public water supply intake, except where the activity is for repair or improvement of the public water supply intake structures or adjacent bank stabilization.

21. Endangered Species. (a) No activity is authorized which is likely to adversely affect a threatened or endangered species as identified under the Federal Endangered Species Act (ESA), or which is likely adversely affect critical habitat of such species. (b) No activity is authorized which may affect a listed species or critical habitat unless consultation under the ESA addressing the effects of the proposed activity has been completed. Non-federal permittees shall notify the District Engineer 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 Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Federal project proponents should follow their own procedures for complying with the requirements of the ESA and provide documentation of compliance with those requirements. (c) No activity is authorized which is likely to jeopardize a proposed species or which is likely to adversely modify proposed critical habitat. (d) Authorization of an activity under RGP-003-MN does not authorize the take of a threatened or endangered species as defined under the ESA. 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 (USFWS), both lethal and non-lethal takes of protected species are in violation of the ESA. General information on the location of threatened and endangered species and their critical habitat is provided in Attachment A and Enclosures 3-7. Information can also be obtained directly from the offices of the USFWS Twin Cities Field office (TCFO) at 612-725-3548. (e) 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 Corps of Engineers must be contacted for further instruction.

22. Bald and Golden Eagle Protection Act and Migratory Bird Treaty Act

Notification to the Corps is required for projects within 0.5 miles (2640 feet) of an eagle nest. There are approximately 1300 bald eagle nests distributed among 64 of Minnesota's 87 counties. In Minnesota, bald eagles typically nest in old, large diameter trees within approximately 500 feet of a water body.

It is recommended that the project proponent also contact the USFWS TCFO (612-725-3548) if the proposed project will disturb a bald eagle or a bald eagle nest. Projects involving the placement of potentially lethal infrastructure (communication towers, wind turbines, transmission lines, etc) within two miles of a bald eagle nest may warrant additional review.

For more information concerning the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act refer to the following websites:

http://www.fws.gov/migratorybirds/mbpermits.html

http://www.fws.gov/midwest/eagle/protect/index.html

http://www.fws.gov/midwest/eagle/guidelines/disturbnestingbaea1.html

23. Expiration Date. Unless otherwise specified in the District's letter confirming your project complies with the requirements of this RGP, the time limit for completing work authorized by RGP-003-MN ends upon the expiration date of this RGP-003-MN. Activities authorized under the RGP-003-MN that have commenced construction or are under contract to commence construction, will remain authorized provided the activity is completed within 12 months of the date of the RGP-003-MN expiration, suspension, or revocation; whichever is 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.

24. Maintenance and Transfer. You must maintain the authorized activity in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted 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 permit from this office, which may require restoration of the area.

25. Inspection. 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 RGP-003-MN.

26. State Section 401 Water Quality Certification. The State of Minnesota Pollution Control Agency has issued a 401 certification for the RGP-003-MN. Permittees must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached.

27. Coastal Zone Management consistency determination. The State of Minnesota has determined that the RGP-003-MN is consistent with the CZM program.

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) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. Limits of this authorization.

a. RGP-003-MN does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. RGP-003-MN does not grant any property rights or exclusive privileges.

c. RGP-003-MN does not authorize any injury to the property or rights of others.

d. RGP-003-MN 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, including but not limited to the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or un-permitted 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 un-permitted 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 Project Proponent's Data: The determination by this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.

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 permittee fails to comply with the terms and conditions of this permit.

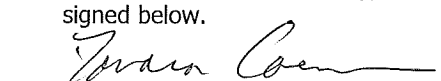
b. The information provided by the permittee in support of the preconstruction notification proves to have been false, incomplete, or inaccurate (see 4 above).

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.

6. This Office may also reevaluate its decision to issue RGP-003-MN at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: 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.

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



for Daniel C. Koprowski
Colonel, Corps of Engineers
District Engineer

11/06/2015
Date

Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

February 12, 2013

Ms. Tamara Cameron
USACE
Regulatory Branch Chief, St. Paul District
180 Fifth Street East, Suite 700
St. Paul, MN 55101-1678

RE: Regional General Permit: RGP-003-MN - MPCA modifications to the 401 certification in response to comments received during the Public Notice process.
Clean Water Act Section 401 Water Quality Certification

Dear Ms. Cameron:

This letter is submitted by the Minnesota Pollution Control Agency (MPCA) under the authority of Section 401 of the Clean Water Act (CWA) (33 USC 1251, et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. 7001.1400-7001.1470, 7050, 7052, and 7053. The MPCA modified the 401 portion of RGP-003-MN and has examined the information furnished by the United States Army Corps of Engineers (USACE), specifically the proposed Regional General Permit, RGP-003-MN. MPCA bases its certification decision upon this and other such information relevant to water quality considerations.

The MPCA certifies the referenced general permit (RGP-003-MN) because there is reasonable expectation that the activities identified within it will be conducted in a manner that will not violate applicable water quality standards. The following conditions replace the previous 401 certification conditions and are incorporated into the RGP-003-MN:

1. The in-water Best Management Practices (BMPs) must be properly installed prior to conducting the authorized activities and must be maintained throughout the duration of the project's in-water disturbances. While conducting the work, the BMPs must also be visually monitored to ensure management of turbidity and/or sedimentation. If turbidity and/or sedimentation caused by the project, is observed outside and downstream of the defined work area, then the authorized activities must cease immediately until alternative BMPs, which will adequately control turbidity and sedimentation, have been implemented. This certification does not authorize the applicable water quality standards governing these waters of the state to be violated outside of the defined work area. In-water BMPs must be included in the construction plan. Further information regarding the types of BMPs that may be suitable for this purpose can be found in a manual at the following webpage:
http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

2. For MN Areas of Concern, that are limited to the St. Louis River and its bay, contact MPCA and also see U.S. Environmental Protection Agency website: http://www.epa.gov/greatlakes/aoc/.

3. In water BMPs should be used for any dredging. One potential source of BMPs is the Department of Natural Resources website:
http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

4. Bridge Maintenance Construction and/or Demolition activities: In addition to following all other applicable certification conditions, including condition 1 above, activities authorized by RGP-003-MN that involve bridge maintenance, construction and/or demolition must also comply with the following conditions:

   a. Excluded Activities. This certification does not authorize bridge demolition activities that exclusively use explosive devices to implode or collapse a bridge, or any portion of a bridge, into a river or stream, including intermittent streams.

   b. Any painting, cleaning, or restoration of bridges that is associated with the activity authorized by RGP-003-MN must use curtains or other reliable containment methods to ensure paint, chemicals, grouting or other contaminants will not discharge to any waters of the state.

   c. If the riprap to be placed under a bridge for permanent stabilization is to be grouted with concrete, then prior to conducting the grouting activity, plywood sheeting, sheet piling, sand bags, or other suitable BMP must be placed at the base of the riprap to ensure no uncured cement will reach the waterbody. The BMPs must remain in place until all concrete grouting has cured.

5. Impaired Waters. It is the permittee's responsibility to ensure, while conducting any activities authorized by RGP-003-MN, the activities shall not exacerbate any existing impairments of a CWA 303 (d) listed waterbody. The following MPCA webpages contain more information and search tools available to determine which waters in Minnesota are impaired: http://www.pca.state.mn.us http://pca-gis02.pca.state.mn.us/website/stormwater/csw/viewer.htm http://pca-gis02.pca.state.mn.us/eda_surfacewater/index.html.

6. Pursuant to Minn. R. 7001.1450, failure to comply with any of the conditions above may result in the MPCA invalidating or revoking this 401 Certification on a project-by-project basis. A copy of the certification needs to be available upon request, together with a copy of all other required regulatory authorizations. This certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp. 3. This action does not exempt the RGP-003-MN permittee from the responsibility of complying with all applicable local, state, and federal requirements, including any MPCA authorizations not specifically identified in the certification that may be required, nor does it grant any right to violate personal or property rights.

NOTIFICATIONS: The following notifications are not conditions of the MPCA CWA 401 Certification of RGP-003-MN. They are provided to notify the general public in Minnesota that certain discharges in waters of the United States, or activities associated with discharges into waters of the United States, are also regulated under other rules administered by the MPCA:

1. Minn. R. chs. 7001 and 7090 requires any activity that will disturb one acre or more of land to first acquire a National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS) General Stormwater Permit from the MPCA for discharging stormwater during construction activity. Both the owners and operators of construction activity disturbing one acre or more of land are responsible for obtaining and complying with the conditions of the NPDES/SDS General Stormwater Permit prior to commencing construction activities. Sites disturbing less than one acre within a larger common plan of development or sale that is more than one acre also need permit coverage. A detailed Stormwater Pollution Prevention Plan (SWPPP), containing both temporary and permanent erosion and sediment control plans, must be prepared prior to submitting an application for the NPDES/SDS General Stormwater Permit. In addition, any project that will result in over 50 acres of disturbed area and has a discharge point within one mile of a special or impaired water is required to submit their SWPPP to the MPCA for a review at least 30 days prior to the

commencement of land disturbing activities. If the SWPPP is found to be out of compliance with the terms and conditions of the NPDES/SDS General Stormwater Permit, further delay may occur. For more information, please visit the following webpage: http://www.pca.state.mn.us/publications/wq-strm2-05.pdf.

2. Minn. R. ch. 7001 requires that, prior to testing the structural integrity of any newly-installed pipeline, or any existing pipeline that is maintained and/or repaired by RGP-003-MN, NPDES/SDS Permit coverage must be obtained from the MPCA, which regulates the discharge of water and trench waters associated with this activity.

3. Any asbestos, lead paint, or lead plates on existing bridges authorized to be demolished shall be removed and disposed of in accordance with MPCA rules and regulations.

If you have any questions on this certification please contact Jim Brist at 651-757-2245.

Sincerely,

David Richfield
Supervisor, Agency Rules Unit
Resource Management and Assistance Division

DR/JB:jab

cc: Peter Swenson, USEPA
Tony Sullins, USFWS
Kelly Urbanek, USACE – Bemidji
Dale Homuth, DNR